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August 29, 1997

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

FAX Received 9/1/97

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

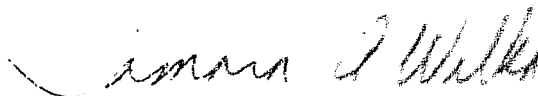
Re: In the Matter of Establishment of Switched Access Rates for U S West Communications, Inc., Docket No. TC96-107  
Our File No. 2104-96-107

Dear Mr. Bullard:

Please find enclosed for filing the original and three (3) copies of U S WEST Communication, Inc.'s Data Request to Staff together with the original Certificate of Service.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &  
GREENFIELD, L.L.P.



Tamara A. Wilka

TAW/vj  
Enclosure

cc: All counsel of record  
William P. Heaston  
Jon Lehner

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August 28, 1997

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**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**FAX Received** AUG 28 1997

Karen Cremer, Staff Attorney  
Public Utilities Commission  
500 E. Capitol  
Pierre, SD 57501

Re: U S West Communications, Inc. v. Public Utilities Commission of South Dakota (Civ. 97-50)  
Docket No. TC96-107  
Our File No. 2104-96-107

Dear Ms. Cremer:

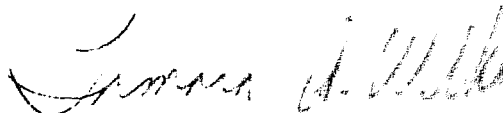
Enclosed please find a copy of U S West Communications Inc.'s Data Request to Staff. This is intended as service upon you via fax and first class mail.

Please forward all information directly to the following:

Wayne Culp  
U S West Communications, Inc.  
1314 Douglas on The Mall - Room 1350  
Omaha, NE 68102

Sincerely yours,

BOYCE, MURPHY, McDOWELL &  
GREENFIELD, L.L.P.

  
Tamara A. Wilka

TAW/vj  
Enclosure

cc: John Lovald  
David A. Gerdes  
Robert K. Sahr  
Richard P. Tieszen  
Thomas H. Harmon

David Pfeifle  
Robert C. Riter  
William P. Heaston  
Jon Lehner  
Wayne Culp



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

SEP 02 1997

IN THE MATTER OF THE ESTABLISHMENT )  
OF SWITCHED ACCESS RATES FOR U S WEST )  
COMMUNICATIONS, INC. )

TC96-10

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

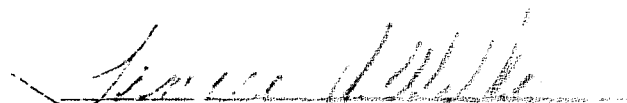
U S WEST COMMUNICATIONS, INC.'s DATA REQUEST TO STAFF

Provide information regarding the following:

FAX Received AUG 28 1997

1. For the years 1995, 1996 and 1997, provide the originating and terminating switched access rates for all South Dakota local exchange carriers including South Dakota Newwork (SDN) and Local Exchange Carrier Association (LECA) and any of LECA's members.
2. For the years 1995, 1996 and 1997:
  - a. Identify the most recent switched access cost studies presented to the Public Utilities Commission by local exchange carrier including SDN and LECA by filing date and docket number.
  - b. Provide the switched access revenue requirement, access minutes of use and access cost per minute of use filed by each exchange carrier identified in (a) above.
  - c. Identify and provide a list of any PUC Staff adjustments made to the cost studies identified in (a) above.

Dated this 28th day of August, 1997.



Thomas J. Welk  
Tamara A. Wilka  
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GREENFIELD, L.L.P.  
P.O. Box 5015  
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Attorneys for U S West Communications, Inc.

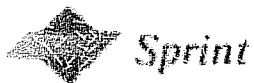
### CERTIFICATE OF SERVICE

I, Tamara A. Wilka, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, and on the 28th day of August, 1997, true and correct copies of U S WEST's Request for Data to Staff was sent via facsimile at approximately 11:15 p.m. and by US mail, postage paid to the following at the address and fax number indicated:

Karen Cremer, Staff Attorney  
Public Utilities Commission  
500 E. Capitol  
Pierre, SD 57501

605-773-3809

  
\_\_\_\_\_  
Tamara A. Wilka



8140 Ward Parkway  
Kansas City, MO 64114  
Telephone: (913) 624-6885  
Fax: (913) 624-5081

Donald Low  
Vice President  
State Regulatory Affairs/Central Region

September 2, 1997

William Bullard  
Executive Director  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501

RECEIVED  
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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BY OVERNIGHT MAIL

Re: US West Access Charges-  
Docket No. TC 96-107

Dear Mr. Bullard:

Enclosed for filing in the above referenced matter are the original and eleven copies of Sprint's Prehearing Brief. Please return a "filed" stamped copy in the enclosed envelope.

A copy of this filing is being served on parties of record. Thank you for your assistance.

Very truly yours,

Donald Low

pc: Dick Tieszen

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SEP 03 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ESTABLISHMENT ) TC 96-107  
OF SWITCHED ACCESS RATES FOR ) SPRINT'S PREHEARING  
US WEST COMMUNICATIONS, INC. ) BRIEF

Pursuant to the Commission's July 3, 1997, "Prehearing Order on Reopening Record," in which the Commission encouraged submission of prehearing briefs, Sprint Communications Company L.P. ("Sprint") submits this brief.

1. Sprint has participated in this matter by previously presenting the testimony of a witness in the first hearing, by filing a post-hearing brief and by defending the Commission's actions before the Circuit Court. Sprint fully supported the results of the Commission's decisions dismissing US West's request to approximately double its access charge rates and is disappointed that the Circuit Court decision requires additional efforts by the Commission to address US West's request.

2. It is clear from the Circuit Court's decision that the Commission should, after hearing any additional evidence, "determine a fair and reasonable rate, render a written decision specifically setting out the rate, and prepare a record of its proceedings." (Transcript of Oral Argument, pp. 86-7, (hereafter "Tr.")). The Court also noted that the Commission should "articulate underlying factual reasons for its public interest finding," if it continues to find that a rate increase is not in the public interest (Tr. p. 77-8).

3. Due to the scarcity of its resources, Sprint is not filing additional testimony in this matter. Furthermore, at the time of preparation of this brief, Sprint has not fully reviewed the additional testimony submitted by other parties, especially with regard to evaluation of US West's cost study. Sprint will assume for purposes of this pre-hearing

brief that the cost study supports a significant increase in rates<sup>1</sup> and under that assumption, urges the Commission to require a phase-in of any such increase, pursuant to ARSD 20:10:27:20, with such phase-in to commence after completion of the revisions to the Commission access charge rules in Docket TC96-032. Sprint does, however, reserve the right to change its recommendation to the Commission in the event that unanticipated evidence is presented at the further hearing in this matter.

4. Although the Circuit Court did not rule on the question of whether the Commission may, as a matter of law, consider the public interest in addressing the proposed access charge increase, (*see*, Tr. p. 78); it is clear that the Commission's rule, ARSD 20:10:27:20, allows for a phase-in if the Commission finds that implementation of the rates resulting from cost studies will "result in a significant change in switched access rates and that a phase-in of rates is in the public interest." Sprint believes that the record already supports a finding that the public interest requires a phase-in and anticipates that additional evidence will be presented which further compels that finding. In compliance with the Circuit Court's opinion, the Commission should articulate that conclusion and the underlying factual support, which generally falls into three general areas: the adverse impact on South Dakota long distance users; the unjustified harm to long distance providers and competition in South Dakota; and the unreasonableness of increasing access charges rates in light of the need to revise the Commission access rules

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<sup>1</sup> Given the relatively short time for further review of the cost study, Sprint would be surprised if staff or other parties were able to fully audit the cost study. Sprint, of course, reserves its right to support other parties' criticisms of the cost study. However, as noted below, the real deficiency of the cost study is the fact that it is based on fully allocated embedded costs rather than economic forward-looking costs.

in compliance with the Telecommunications Act of 1996.<sup>2</sup> Sprint will obviously not attempt to summarize all the public interest evidence which supports a phase-in since that cannot be done until after the hearing, but will briefly outline the basic salient facts which might be considered and articulated. Furthermore, inasmuch as the parties have previously extensively briefed these issues, this brief will not provide citations to the initial record.

5. As summarized in the Commission's January 31, 1997 Order in this matter, there is already significant evidence in the record showing the drastic adverse impact on South Dakota end users of US West's increase in access rates. Several long distance providers testified that the US West increase represents approximately a doubling (ranging from a 100% to a 124% increase) of access costs. Since those costs represented from 50 to 60% of the companies' total costs of providing service, the companies would have no choice but to pass on such increases in rates to their customers, to the extent allowed by customer contract and competitive pricing restraints. Thus, South Dakota customers directly face a significant increase in their long distance charges and bills. Furthermore, since US West's rate increase causes a decrease in long distance competition, as discussed below, South Dakota customers indirectly face increased long distance rates from a less competitive long distance market.

6. It should be obvious that the rate impact on customers is a major factor in considering the public interest under the Commission's statutory duties and ARSD 20 10.27.20. State utility regulatory commissions have traditionally been empowered to take ratepayer impacts into account in establishing rates. *See, e.g. State ex rel. Allain v.*

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<sup>2</sup> Additional evidence may, of course, address some other aspect of the public interest which supports a phase-in.

Miss. Public Service Commission, 435 So. 2d 608 (Miss. 1983); Camelot Utilities, Inc. v. Illinois Commerce Commission, 8 Ill. Dec. 74, 365 N.E. 2d 312, 51 Ill. App. 3d 5 (1977); Pennsylvania Public Utilities Commission v. Pennsylvania Gas and Water Co., 424 A.2d 1213, 492 Pa. 326, cert. Denied 102 S. Ct. 112 (1979). At least one court has explicitly recognized that the phase-in of rate increases is a "useful tool" which the regulatory commission may use "in balancing the interests of the investors and the ratepayers." Kansas Gas and Elec. Co. v. State Corp. Commn., 239 Kan. 483, 514, 720 P.2d 1063, 1086 (1986). Consequently, both the evidence previously heard and any addition evidence concerning adverse ratepayer impact can be relied on to support a phase-in of any increase in access rates.

7 Sprint assumes that there will be evidence presented, in addition to that already in the record, concerning the impact on long distance competitors in South Dakota of US West's access charge increase. In the first hearings in this matter, several smaller providers testified that the increases would severely hamper their ability to continue providing service since many of their customer contracts limit the annual percentage increase allowed in rates. Indeed, some suggested that they would be eliminated from the marketplace. Clearly, a reduction in the number of financially viable long distance providers would hurt competition in South Dakota.

8 Sprint's witness in this matter also testified that the increases in access charges would provide US West with unfair competitive advantages by creating a price squeeze for competitors of US West. Increased access charges represent actual costs to the competitors but, even if imputed appropriately to US West's long distance services,

represent increased profit margins to US West. Such a price squeeze would also have the effect of lessening long distance competition in South Dakota.

9. A diminution of competition due to either elimination of the number of competitors or an unreasonable pricing advantage for US West would be contrary to the public interest, as defined by the national policy in the Telecommunications Act of 1996 to promote competition in telecommunications services. In order to promote that public interest in fostering competition, a phase-in of any significant increase in access charges is necessary. An appropriate phase-in should help alleviate the dire consequences for the smaller providers by allowing substantial yearly recovery of the increases under their contract restrictions. It would also tend to mitigate the price squeeze advantage conferred on US West. As noted by several parties in prior briefs in this matter, a phase-in cannot not reasonably be objected to by US West since US West recognized and agreed in prior access cases that a significant increase in access rates would harm the development of competition and that such an increase should be phased-in consistent with the public interest provision of ARSD 20:10:27:20.

10. Finally, a phase-in of any access charge increases is in the public interest to avoid an unreasonable and drastic fluctuation in rates. As Sprint and other parties previously argued in this case, the Telecommunications Act of 1996 will compel a reduction in access charges to levels based on cost, determined "without reference to rate-of-return or other rate-based proceeding." As witnesses have previously explained, pricing of access on a different basis than pricing of network elements is not reasonable and will not be viable in a competitive environment. Sprint believes that network elements should be priced on the basis of forward-looking costs studies such as TELRIC but



recognizes that the recent decision by the Eighth Circuit Court of Appeals may leave that issue open for debate. In any event, it is clear that the Commission's current access charges rules allowing fully allocated embedded costs is based on rate-of-return concepts which cannot be used for pricing of network elements under the Act. Sprint consequently urges the Commission to proceed with revisions to its existing access charge rules in Docket No. TC96-032. Since those revisions should result in lower access charges, it would be unreasonable to allow US West to double its access rates now only to lower them when the revised rules are implemented. Such a drastic fluctuation in rates is undetainable and not in the public interest. Again, a phase-in of any increase is necessary to promote this aspect of the public interest.

11. Sprint believes that the Commission has considerable discretion with regard to the specific components of the phase-in which should be ordered. Clearly the length of the phase-in and the amount of the permissible increase allowed in each step of the plan should depend on a number of factors, including: the ultimate increase (if any) justified by US West's cost study, the Commission's judgment concerning unreasonable ratepayer impacts, and the extent to which the smaller providers may cope with periodic increases. Such a phase-in should not commence until after the Commission has completed its revisions to the access charge rules, after which it may evaluate the various factors to determine an appropriate schedule for any increases.

IN CONCLUSION, Sprint urges the Commission to exercise its discretion under ARSD 20:10:27:20 to order a phase-in of any increase in access rates which is justified by US West, in order to protect various aspects of the public interest. Such a phase-in should

not commence until the Commission revises its access charges rules consistent with the mandate of the Telecommunications Act of 1996.

Dated: September 2, 1997

Respectfully submitted,

Sprint Communications Company L.P.



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Certificate of Service

The undersigned hereby certifies that the foregoing was served by mailing a copy, postage prepaid, on this 2<sup>nd</sup> day of September, 1997, to the persons on the attached service list.

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September 3, 1997

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William Bullard, Jr., Executive Director  
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RE: TC 96-107

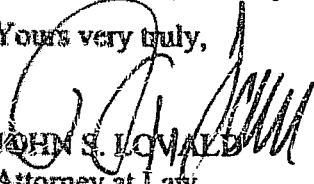
Dear Mr. Bullard:

RECEIVED  
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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

I enclose herewith an original and three copies of AT&T's Pre-Hearing Brief concerning the above captioned docket. This brief is being filed and served consistent with the Commission's suggestion in the Procedural Order that pre-hearing briefs be filed.

However, we are not including with that brief proposed findings of fact and conclusions of law contemplated by the ARSD § 20:10:01:25 inasmuch as the record is not complete.

Yours very truly,

  
JOHN S. LOVALD  
Attorney at Law

JS�:mmh

Cc: Service List

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**PRE-HEARING  
BRIEF OF AT&T**

application by U S WEST Communications, Inc. ("U S WEST") to increase its switched access rates<sup>1</sup>:

would not be in the public interest at this time.<sup>2</sup> The Commission should resolve these

11 This brief presumes that Judge Zinter's order controls in these proceedings. However, AT&T does not  
12 concede that Judge Zinter's order was correct, and reserves the right to challenge that order following the  
13 conclusion of these remand proceedings. AT&T believes, among other things, that Judge Zinter's order  
14 may have unlawfully shifted the burden of proof from U S WEST to the Commission. However, as Judge  
15 Zinter correctly stated: "the burden is clearly on the company [i.e. U S WEST] to prove that the proposed  
16 rate is fair and reasonable." See May 1997 Tr. p. 6, lines 4-5; see also SDCL § 49-11-12(d)(3).

perceived omissions by issuing a more detailed order which expressly sets forth each of the many facts already in the record, and any additional facts developed during the remand proceeding, that support the Commission's ultimate determinations.

The record currently contains sufficient evidence not only to reject an increase in U S WEST's switched access rates, but to require a decrease in those rates. The record contains testimony that (1) the cost of providing switched access is less than a cent; (2) the federal rate for the identical switching element is under three cents; and (3) the cost of the Carrier Common Line ("CCL") portion of the proposed rate is zero. Furthermore, the Telecommunications Act of 1996 (the "Act") requires switched access rates to be reduced to economic cost. Accordingly, the Commission should not permit U S WEST to bully it into granting an unjustified increase. Rather, the Commission should set the rate at or below the level at which it stood prior to U S WEST initiating this docket.<sup>1</sup>

The Commission should reject any arguments that the existing cost model (the "Model") requires a rate increase. The Model was never intended to supplant the Commission's discretion and duty to set a fair and reasonable switched access rate. The purpose of the Model was merely to set a "ceiling" for switched access rates - the floor remains within the discretion of the Commission. Furthermore, in any event, the Commission is legally obligated to reject the Model to the extent that its use would result in a rate which the Commission believes is not "fair and reasonable." In short, the requirements of SDCL § 49-31-12.4 and Judge Zinter's order trump the Model.

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<sup>1</sup> Judge Zinter's order does not require the Commission to grant an increase. It requires the Commission to expressly set a switched access rate that is "fair and reasonable." Contrary to U S WEST's position, these two concepts are not the same.

Finally, even if the Commission were to find that the totality of the evidence were to justify a rate increase – which it does not – the responsible way to implement it would be through a phase-in. Prior to this docket, U S WEST readily embraced the phase-in concept. U S WEST's change of heart and demand for an immediate doubling of rates without a phase-in appears to conflict with the Act's mandate that rates go the other way, namely, down to economic cost.

## **II. THE COMMISSION MUST SET A SWITCHED ACCESS RATE THAT IS FAIR AND REASONABLE**

Judge Zinter's primary grounds for remand was his determination that the Commission had failed to affirmatively set a rate in accordance with SDCL § 49-31-12.4, which provides for the Commission to "determine a fair and reasonable rate, render a written decision specifically setting out the rate or price and prepare a record of its proceedings." See SDCL § 49-31-12.4 (emphasis added); see U S WEST Communications, Inc. v. Public Utilities Commission of South Dakota, Civ. No. 97-50, Transcript of Bench Decision, May 16, 1997 (hereinafter, "Appeal Transcript"), p. 6. Indeed, the Appeal Transcript expressly quotes the statutory language requiring the Commission to "determine a fair and reasonable rate" no less than three times. See Appeal Transcript, pp. 6, 14, 19 (emphasis added). As set forth below, the "fair and

reasonable rate" for the switched access rate is at or below the last rate set by the Commission.<sup>4</sup>

The Commission has ample evidence to determine that the cost of switched access is lower than the switched access rate that was in place when U S WEST initiated this docket, including, among other things:

1. AT&T witness Pat Parker testified that the cost of providing switched access is one-half cent per minute (i.e. 0.5 cents). See TC96-107, Transcript, October 9-10, 1996 ("October 9-10 Transcript"), p. 304; see also Prefiled Testimony of Patricia A. Parker, filed October 4, 1996 ("Parker Testimony"), pp. 10-11.
2. Both U S WEST witness Wayne Culp and AT&T witness Pat Parker testified that the cost of the CCL portion of the proposed switched access rate -- which U S WEST proposes to increase from under a cent (i.e. 0.6692 cents) to over four cents (i.e. 4.0575 cents) -- is zero. See October 9-10 Transcript, p. 71; see Parker Testimony, pp. 13.
3. U S WEST has admitted that the cost of providing interstate switched access is the same as the cost of providing intrastate switched access; e.g., TC91-040A, U S WEST Brief, p. 12; which makes sense because both types of

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<sup>4</sup> Nothing in SDCL § 49-41-12.4, the controlling statute, prohibits the Commission from determining that an existing, or lower, rate is the "fair and reasonable" rate. See SDCL § 49-41-12.4. Similarly, Judge Zinner was careful to explain that the Commission retained the discretion to set the switched access rate. See e.g., Appeal Transcript, p. 5 ("the PUC decision to determine a fair and reasonable rate is a factual determination, which is within the expertise and experience of the Commission"), p. 17 ("My decision is not intended to imply that the Commission, if not satisfied with the numbers, cannot inquire into those matters"), p. 21 ("I don't think it's a judicial function to tell the Commission on remand how to conduct its business").



switched access utilize the same equipment. U S WEST witness Barbara Wilcox testified that the interstate switched access rate at the time of the original hearing for these proceedings was just over two and one-half cents (i.e. 2.55 cents) per minute. See October 9-10 Transcript, p. 354.

Furthermore, the interstate switched access rate has since dropped to its current level of under two cents (i.e. 1.8 cents) per minute. See U S WEST Tariff Transmittal No. 847 to the FCC, dated June 16, 1997, effective July 1, 1997.

4. In the interconnection arbitration between AT&T and U S WEST, the combined rates proposed by U S WEST for local switching, tandem switching and common transport -- which combined are the functional equivalent of switched access -- total no more than just over one-half of a cent (i.e. 0.6516 cents).<sup>5</sup> See TC96-184, In the Matter of the Interconnection Contract

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<sup>5</sup> The total comes from the following equation: 0.3334 cents for local switching + 0.2076 cents for tandem switching + 0.0406 cents for fixed common transport + (0.0014 cents for per mile common transport x 50 miles) = .6516 cents. AT&T has given U S WEST the benefit of the doubt for these calculations by assuming the highest possible numbers for each item. First, they assume that all of U S WEST's proposals were adopted without downward modification, even though the Commission ultimately reduced U S WEST's proposal for tandem switching from 0.002076 to 0.001676 to eliminate the 0.0004 that U S WEST had improperly included for a reserve deficiency. Second, they assume that all calls use the maximum rate for common transport under those proposals (i.e. all calls being 50 miles, the most expensive rate), even though many calls in fact will require less expensive common transport because they will involve shorter distances. Third, they do not reflect the downward revisions that will result when U S WEST recalculates them in accordance with the Commission's order to rerun U S WEST's models using South Dakota prescribed depreciation lives from TC94-121. See TC96-184, Notice of Entry of Order on Reconsideration, dated August 13, 1997, p. 5, ¶ 2. Thus, the combined average rate for the UNE equivalent of switched access actually will be even lower than .6515 cents -- which further demonstrates the fallacy of U S WEST's position that switched access rates should increase from the previously approved rate of over three cents.

Notably, these are not figures from AT&T's cost model (i.e. Hatfield). These are figures directly from cost models developed and proposed by U S WEST. Thus, U S WEST's own cost models demonstrate that U S WEST's proposed switched access rate in these proceedings is hopelessly excessive. For perspective, the

Negotiations Between AT&T Communications of the Midwest, Inc. and U S WEST Communications, Inc. Pursuant to 47 U.S.C. § 252, Findings of Fact and Conclusions of Law and Order, dated March 20, 1997, ¶¶ 120, 130-131, 132-133.

In short, the range of potentially "fair and reasonable" rates for switched access includes figures far below the rate previously set by the Commission and accepted by U S WEST prior to the pending application for a rate increase.

Furthermore, U S WEST's proposed rate increase is not "fair and reasonable" because such an increase is not in the public interest. Judge Zinter expressed concern that the Commission did not sufficiently explain in its prior order why an increase is not in the public interest.<sup>\*</sup> However, the Commission can address this concern by preparing findings explaining its reasoning and setting forth specific citations to evidence which indicate that a rate increase will harm South Dakota consumers and small providers of telecommunications. See, e.g., TC96-107, Prefiled Testimony of Howard Susskind, Fred L. Thurman, W. Thomas Simmons and Jerry R. Noonan, each filed on or about August 27, 1997. Obviously, it is not in the public interest to adopt a rate that the Commission

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over six cent rate that U S WEST proposes for switched access is over nine times higher than the 0.6519 cents that its own cost models establish as the cost for providing the UNE equivalent of switched access.

<sup>\*</sup> Judge Zinter declined U S WEST's invitation that he hold that the Commission is not entitled to consider the public interest when setting rates. Appeal Transcript, p. 10. In fact, it is well established that the Commission may consider the public interest in connection with the performance of its duties. See Northwestern Bell Telephone Co. v. Chicago and NW Transportation, 245 N.W. 2d 630, 642 (S.D. 1976) ("public service commissions are generally empowered to, and are created with the intention that they should regulate public utilities insofar as the powers and operations of such utilities affect the public interest and welfare"); SDCL § 49-31-7 ("Commission may conduct any investigations necessary to protect the public interest")

has already found would constitute "rate shock," particularly when the evidence shows that the cost of providing switched access is far below the rate proposed by U S WEST.

Finally, a rate increase is "not fair and reasonable" now that the Act and the FCC have mandated access reform. See 47 §§ U.S.C. 252, 253, 254; see CC 96-262, 94-1, 91-213, and 95-77, FCC Order on Access Reform, dated May 16, 1997, recon. denied, June 17, 1997. Indeed, U S WEST witness Jon Lehner tacitly recognized during the AT&T interconnection arbitration that the Act and FCC require access rates to decrease, stating in reference to access rate subsidies that, come June 30, 1997, "that game is over." TC96-184, In the Matter of the Interconnection Contract Negotiations Between AT&T Communications of the Midwest, Inc. and U S WEST Communications, Inc. Pursuant to 47 U.S.C. § 252, TC96-184, Transcript, February 3, 1996, p. 90. It is common knowledge that current switched access rates do not reflect the cost of providing the service, and that the overwhelming national trend has been, and continues to be, decreasing switched access rates. U S WEST's proposed increase for switched access rates here stands in dramatic contrast to this trend.

For all of these reasons, the Commission should determine that the "fair and reasonable" rate for switched access is at or below the rate in existence when U S WEST first sought this increase, and should therefore, set the rate at or below that prior rate.

III. THE COMMISSION SHOULD REJECT ANY ATTEMPT TO USE THE COST MODEL TO REACH A SWITCHED ACCESS RATE THAT IS NOT OBJECTIVELY "FAIR AND REASONABLE"

For a number of reasons, the Model does not deserve any consideration as a mechanism to determine the fair and reasonable switched access rate for U S WEST. First, the Model is not meant to be used to determine the precise rate that U S WEST may charge for switched access. Rather, the Model is only supposed to be used as a tool to identify the "ceiling" for U S WEST's switched access rate. See TC 94-121, Order Granting Approval of Stipulation and Addendums, January 8, 1996, Finding of Fact XXII, p. 5. Indeed, in a previously approved stipulation signed by U S WEST and Staff, U S WEST accepted that the Model provides only a "ceiling" for its switched access rate. See Id., Stipulation and Agreement, dated June 12, 1995. While U S WEST now wants to transform the Model into a tool to determine a rate "floor," U S WEST's prior stipulation suggests that U S WEST recognizes it was not meant to be used for such a purpose.

Second, the Model was created years ago, in an entirely different telecommunications environment. It pre-dates the Act and the FCC's rules regarding access reform. It is based on outdated rate of return methodology and fails to consider forward-looking economic costs. Indeed, the Commission recognized the need to replace the Model when it opened docket number TC 96-032 over a year ago to reform the

methodology for setting switched access rates.<sup>7</sup> In short, the Model has outlived its usefulness as a tool for use in rate making proceedings. Accordingly, the Commission should exercise its discretion to reject its use for these purposes. See American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 90 S. Ct. 1288 (1970) (an agency always has the discretion to discard procedural mechanisms that it has adopted for the orderly transaction of business before it when required by the ends of justice); Hoxter v. U.S. Dept. of Agriculture, 82 F.3d 165 (7<sup>th</sup> Cir. 1996) (an agency has the power, indeed the inescapable duty, to interpret its own rules just as it has the duty to interpret the statute that it enforces); see also SDCL § 20:10:27:02 (Commission may waive or suspend any Commission rule in chapters 20:10:27 to 20:10:29 for good cause).

Third, Judge Zinter's order does not permit the Commission to accept U S WEST's invitation to blindly set the rate at whatever number the outdated Model spits out regardless of whether such a number would produce a "fair and reasonable" rate as the statute requires. Judge Zinter's order makes clear that the Commission is constrained to follow the statutory mandate. The statute requires that the Commission set a rate which is "fair and reasonable." The statute does not require the use of a cost model at all; and the Model cannot be used to the extent that it produces a rate which is not consistent with the statutory mandate to set a rate which is "fair and reasonable." See Railroad Comm'n of Texas v. Arco Oil and Gas Co., 876 S.W.2d 473 (Tex. App. 1994) (agency rules may not modify or contravene statutory mandate); DeMario v. Franklin Mortgage & Inv. Co.

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<sup>7</sup> In fact, TC96-032 predates TC96-107, which further indicates that U S WEST knew the Model was a lame duck when it initiated these proceedings.

Inc., 648 So.2d 210, reh. en banc denied, rev. denied, 659 So. 2d 1086 (Fla. App. 4<sup>th</sup> Dist. 1994) (same); EPA v. Pollution Control Board, 824 P.2d 83 (Colo. App. 1991) (agency cannot impose by regulation or practice requirements that are inconsistent with the statute conferring authority on the agency, nor may it put rules into effect which the legislation did not proscribe); Mammenga v. State Dept. of Human Services, 442 N.W.2d 786 (Minn. 1989) (agency rules may be deemed invalid if applied in a manner that contravenes the requirements of the authorizing statutes).

In short, the Commission is not required to follow the Model. The Commission should reject any numbers it produces to the extent that the totality of the evidence shows such numbers would not result in a "fair and reasonable" switched access rate for the State of South Dakota.

#### IV. THERE IS SERIOUS REASON TO QUESTION THE PURPORTED RESULTS OF THE MODEL

U S WEST's purported results from the Model continue to lack credibility. As set forth in AT&T's testimony and its closing brief following the original proceedings on this matter, there exists a plethora of specifically identified flaws in U S WEST's inputs into the Model that cast doubt on the entire credibility of U S WEST's presentation. See Parker Testimony; see October 9-10 Transcript, pp. 261-307; see TC96-107, Brief of

AT&T, dated November 13, 1996, Section III.<sup>8</sup> U S WEST has done nothing in its subsequent filings to correct those flaws. Moreover, U S WEST has not even attempted to explain why it made these flaws. Instead, U S WEST has taken the position that it will simply ignore, without explanation, any specific challenges made to its inputs no matter how significant the error. This evasive strategy provides a reasonable basis for the Commission to conclude that the specific flaws identified in U S WEST's inputs were not isolated ones, but rather, were indicative of an intrinsic failure by U S WEST to take sufficient precautions to insure the general reliability of any of its inputs.

Furthermore, the numbers that U S WEST contends are mandated by the Model defy real world calculations regarding the cost of switched access. As set forth above, there is evidence that the cost to U S WEST to provide switched access is approximately one-half of a cent (i.e. 0.5 cents), that the accepted rate for the identical service provided over the same equipment for interstate switched access is one and eighth-tenths of a cent (i.e. 1.8 cents), that the over four cents (i.e. 4.0575 cents) which U S WEST proposes for the CCL portion of its proposed rate has a cost of zero (i.e. 0.00 cents), and that U S WEST's own cost model shows that the UNE equivalent of switched access service has a total cost of just under seven-tenths of a cent (i.e. 0.6516 cents). Thus, there is a serious flaw in either the Model itself or in U S WEST's inputs into the Model. Either way, the results of the Model advanced by U S WEST should be rejected.

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<sup>8</sup> AT&T hereby incorporates by reference each of the positions set forth in its prior testimony and closing brief regarding this and each of the other issues raised therein.

Nor does the Staff provide credible evidence to resurrect U S WEST's flawed inputs, because Staff neither has, nor has retained, any individuals with sufficient training to independently review the source of those inputs. At the July 2 procedural hearing, Staff counsel admitted that Staff lacks a CPA or "analyst trained in what are generally-accepted accounting principles or standards." TC96-107, Transcript, dated July 2, 1997, p. 9, lines 14-18. Staff counsel further admitted that, while Staff could "go on site and pull numbers and do a sampling," Staff needed "a CPA firm with someone knowledgeable in knowledge such as this, if that's the term we're using here is audit, who would supervise staff so that the appropriate tasks and measures are done, because we don't know what those are." *Id.*, p. 9, line 18-p. 10, line 4. However, despite receiving authority from the Commission to retain the necessary outside consultants, Staff retained no outside consultants. *See* Prefiled Testimony of Greg Rislov, filed August 26, 1997, p. 2, line 21-p3, line 18.<sup>9</sup> Thus, Staff's support for U S WEST's proposal is analogous to a building that rests on no foundation.

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<sup>9</sup>Staff provided the following testimony about its failure to use outside consultants.

Q: The Commission authorized the hiring of consultants to assist staff in the process. What functions did the consultants perform?

A: No consultants were hired.

Q: Why

A: Several reasons. Our list of eligibles was reduced by our desire to avoid the appearance of any conflicts of interest. Because the scope of this docket's participants is so broad, and US WEST is so large, this criteria eliminated many seemingly potential candidates. We then conducted inquiries directed toward determination of what type of assistance would be most beneficial, certified public accountants or statistical experts. The statistical experts who were contacted, once the scope and timing of our analysis was explained, indicated they would be unable to assist us. The CPAs contacted were also concerned about the scope and timing. As a result, none of our contacts were able to offer satisfactory services within the time allotted.



The Commission's pre-hearing order reopening the record required Staff to independently verify both the "accuracy" and the "validity" of U S WEST's inputs. See TC96-107, Prehearing Order On Reopening Record, dated July 3, 1997, ¶ 1-2. However, it appears from Staff's recently prefiled testimony that it did not complete this task. The prefiled testimony indicates that Staff merely permitted U S WEST to direct Staff to specific numbers in U S WEST ledgers that were the same as the numbers U S WEST had previously provided to Staff with the Model. The prefiled testimony contains no evidence that anyone independently reviewed those ledgers, or any supporting documentation, to determine the underlying "validity" of those specific numbers; let alone that Staff's investigation even involved anyone with the necessary qualifications to perform such a review. Id. Accordingly, Staff's efforts – no matter how well intentioned – cannot provide independent support for U S WEST's fatally flawed request for an increased switched access rate.

V. U S WEST'S APPLICATION IGNORES ITS PRIOR AGREEMENT THAT ANY RATE INCREASES BE PHASED-IN

For the reasons stated above, the only changes that the Commission should make to U S WEST's switched access rate is to lower it in accordance with the cost of

---

Q: What services was staff interested in receiving?

A: We were interested in utilizing a CPAs input to explore possibilities for achieving auditing types of analysis that could maximize our output in the time allotted. While we knew we could perform an analyses, we had hoped to improve our efficiency when doing so

providing access, and in accordance with the mandates of the Act and the FCC.

However, even in the event of a rate increase, the Commission would be remiss to ignore U S WEST's repudiation of its prior agreement that if a rate increase were justified, such increase should be phased-in to accommodate the public interest. As set forth in Section IV of AT&T's closing brief for the original proceedings, U S WEST previously agreed that if a rate increase were justified it would be phased-in over a thirty-six month period. See Brief of AT&T, dated November 13, 1996 (citing TC94-121, TC93-103 and TC96-028); see also ARSD 20:10:27:20 (phase-in appropriate to protect the public interests in the event of significant changes in switched access rates). Accordingly, U S WEST should be constrained to phase-in any rate increase it may obtain now or in the future over such a thirty-six month time period.

## **VI. CONCLUSION**

For the foregoing reasons, U S WEST has not satisfied its burden of proof in these proceedings to obtain an increase in its switched access rate. The Commission should reject U S WEST's application, and the Commission should expressly set a "fair and reasonable" rate for switched access that is at or below the rate previously approved by the Commission. In addition, the Commission should complete TC96-032 to develop a new method for determining access rates. Finally, the Commission should take all necessary steps to implement the access reform mandated by the Act and the FCC's access reform rules.

DATED: September 3, 1997

Respectfully submitted,

By: 

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SEP 03 1997

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE  
ESTABLISHMENT OF SWITCHED  
ACCESS RATES FOR U S WEST  
COMMUNICATIONS, INC.

)  
) DOCKET NO. TC96-197  
)  
) CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served a true and correct copy of AT&T'S PRE-HEARING  
NOTICE by hand-delivery, upon the following:

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Thomas H. Harmon  
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Pierre, South Dakota 57501

and by Federal Express Overnight Delivery, upon the following:

William P. Heaston  
Senior Attorney  
US West Communications, Inc.  
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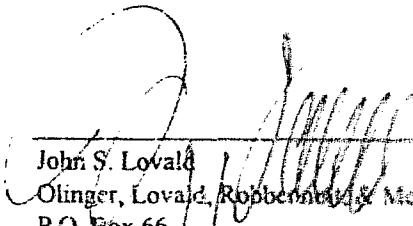
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dated this 3rd day of September, 1997.

  
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Senior Attorney

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**VIA FACSIMILE & OVER NIGHT DELIVERY**

SEP 04 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

September 3, 1997

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
State of South Dakota  
500 East Capitol Avenue  
Pierre, South Dakota 57501

FAX Received SEP 03 1997

Re: In The Matter of The Investigation Of U S WEST Communications,  
Inc., Of Switched Access Rates for U S WEST Communications, Inc.  
Docket No. TC96-107

Dear Mr. Bullard:

Enclosed for filing the in above-referenced docket are the following documents:

Rebuttal Testimony of Barbara M. Wilcox  
Rebuttal Testimony of Wayne Culp.

Please file stamp an extra copy of this letter, enclosed, and return to me in the  
unopened self-addressed stamped envelope. Thank you.

Yours truly,

  
William F. Heaston

Enclosures  
WPH:mob

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SEP 04 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

FAX Received SEP 03 1997

U S WEST COMMUNICATIONS, INC.

REBUTTAL TESTIMONY

OF

WAYNE CULP

South Dakota Public Utilities Commission

Docket TC96-107

Filed September 3, 1997

EXHIBIT

Q. PLEASE STATE YOUR NAME AND EMPLOYER.

A. My name is Wayne G. Culp and I am employed by U S WEST<sup>1</sup>.

Q. DID YOU PREFILE DIRECT TESTIMONY IN THIS DOCKET ON AUGUST 27, 1997?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my testimony is to rebut the testimony of Jerry R. Noonan of Tele-Tech, Inc. and TAG.

Q. PLEASE SUMMARIZE MR. NOONAN'S DIRECT TESTIMONY.

A. Mr. Noonan developed his own allocation method to determine switched access revenue requirement for U S WEST that does not follow the South Dakota switched access rules. He did this by first calculating the U S WEST Communications Group<sup>2</sup> percentages for "revenue segments .. broken into classifications as if the South Dakota customers were generating the same percentage of income as the Group."<sup>3</sup> Second, he applied the "Group" percentages to the South Dakota U S WEST expenses, return on investment, and taxes to recommend the amount of access revenue requirement that U S WEST should be allowed<sup>4</sup>.

<sup>1</sup> U S WEST Communication, Inc. is referred to as U S WEST and is different and separate from U S WEST Media Group that operates the international and cable operations of U S WEST, Inc.

<sup>2</sup> U S WEST Communications Group, Inc. or Group as referred to by Mr. Noonan includes the regulated and deregulated telecommunication operations of the 14 state operations.

<sup>3</sup> Jerry Noonan direct testimony page 6, lines 16 through 19.

<sup>4</sup> See attachment Exhibit D, Column I of Jerry Noonan direct testimony.

Q. WHAT IS THE REQUIREMENT IN THE SOUTH DAKOTA ACCESS RULES  
CONCERNING ALLOCATION OF COSTS TO SWITCHED ACCESS?

A. South Dakota Switched Access Rule 20:10:28:04 states that separations of  
costs are to be based upon actual use.

Q. DOES THE RELATIVE LEVEL OF TOTAL 14 STATE U S WEST REVENUES  
HAVE ANY RELATIONSHIP TO THE DEVELOPMENT OF SOUTH DAKOTA  
SWITCHED ACCESS COSTS?

A. No. The percentage of total intrastate switched access revenues collected  
throughout U S WEST has no relationship to the usage or cost of providing  
switched access service in South Dakota. The Commission must use its own  
rules and not consider Mr. Noonan's analysis to establish switched access rates.

Q. WHAT IS MR. NOONAN'S SWITCHED ACCESS PERCENTAGE AND WHAT  
DOES IT REPRESENT?

A. Mr. Noonan developed a total 14 state U S WEST switched access revenue  
percentage that is 7.88%.<sup>5</sup> He calculated this as a percentage of total  
U S WEST intrastate access revenues received from interexchange carriers  
(IXC) compared to total U S WEST revenues. Mr. Noonan represents this to be  
a basic allocation factor to determine an IXC switched access revenue  
requirement.

Q. HOW DOES MR. NOONAN DEVELOP HIS ACCESS RATE?

<sup>5</sup> See Mr. Noonan direct testimony page 3, line 10.



A Mr Noonan uses the 14 state U S WEST switched access revenue percentage of 7.88% to allocate South Dakota expenses and investment to the IXC access column.<sup>6</sup> He uses the expenses, taxes, and return on investment in the IXC access column to determine his recommended revenue requirement of \$13,490,370. Then he sums the IXC minutes with the U S WEST imputed minutes from long distance and inconsistently divides all of these minutes into just his IXC calculated revenue requirement.

**Q. HOW SHOULD MR. NOONAN CORRECT HIS INCONSISTENCY?**

A To remain consistent in his analysis, Mr. Noonan at least needs to match cost causation with usage. One way would be to divide IXC access costs by IXC switched access minutes. Another alternative would be to capture all of the long distance and switched access costs. This total cost can then be matched with the sum of imputed switched access minutes from long distance and IXC switched access minutes. Again, this discussion and criticism is all academic because Mr. Noonan's analysis did not follow the South Dakota rules.

**Q. WHAT LEVEL OF REVENUES DID U S WEST HAVE IN SOUTH DAKOTA DURING THE 1995 TEST PERIOD?**

A Per the U S WEST South Dakota ledger the sum of interstate, intrastate, and deregulated revenues was \$184 million for the 1995 test period. The 55 exchanges sold in 1996 contributed revenues of \$24 million and therefore the adjusted 1995 test period revenues were \$160 million. The \$184 million in unadjusted 1995 South Dakota revenue is shown below.

<sup>6</sup> Mr. Noonan direct testimony Exhibit D, column 1.

\$125 million	intrastate
\$52 million	interstate
<u>\$6 million</u>	<u>deregulated</u>
\$184 million	total 1995 revenue

Q. DOES U S WEST REPORT "OTHER SERVICE REVENUE" TO THE PUC AS  
ASKED OF MR. NOONAN ON PAGE 3 LINE 20 OF HIS TESTIMONY?

A. No, Mr. Noonan's allocation of total 14 state U S WEST revenues is off the mark. He simply uses "other services revenue" to label the unexplained difference from his analysis. It has no relevance to any South Dakota revenue in the test period. There are differences between how customers in South Dakota and customers in the other states served by U S WEST purchase services. It would be coincidental if South Dakota percentages were the same as the whole company average.

Q. ARE THERE CERTAIN REVENUES THAT DO NOT NEED TO BE BROUGHT  
INTO THE COST MODEL CALCULATIONS AS STATED BY MR. NOONAN ON  
PAGE 3, LINE 27?

A. Actually, there are no revenue inputs in the Commission's South Dakota switched access model. The model is designed to calculate the switched access revenue requirement based upon cost of service. The revenue requirement is equal to the expenses, taxes and return on investment allocated to switched access. Revenues do not enter into the equation for determining the switched access revenue requirement when the South Dakota rules are followed.

Q. SPECIFICALLY FOR NETWORK ACCESS REVENUE, WHY IS THE RATIO OF  
ACCESS REVENUE LIKELY TO BE DIFFERENT FROM STATE TO STATE?

1 A From state to state, there are many differences. Most importantly, South Dakota  
2 along with several other states have one long distance serving area or one  
3 LATA. The states with larger population have multiple LATAs and U S WEST at  
4 this time can not provide interLATA telecommunication service. These  
5 interLATA service constraints significantly change the long distance and  
6 switched access revenue patterns from state to state. Further, the variations in  
7 demographics including the size of the Company's serving area and the density,  
8 location and quantity of the customers will cause differences in long distance  
9 and access usage patterns. There are no large metropolitan areas in South  
10 Dakota that are in excess one million in population. This obviously points out  
11 the difference between South Dakota demographics compared to the large  
12 population states.

13 Q. WHAT OTHER CONCERNS DO YOU HAVE OF MR. NOONAN'S ANALYSIS  
14 OF LONG DISTANCE REVENUES?

15 A There are several. First, on page 4, lines 28 through 35 of his testimony, Mr  
16 Noonan discusses U S WEST's total long distance and intrastate access  
17 revenues for 1995. These are the amounts from the South Dakota ledger and  
18 are as reported on the Commission annual report. These amounts are not  
19 adjusted for the sale of exchanges and include intrastate revenues for long  
20 distance or toll, switched access, and special access (private line). The \$42.7  
21 million revenue requirement Mr. Noonan refers to on page 4, line 30 is adjusted  
22 to remove the long distance and access revenue requirement for the sale of 55  
23 exchanges.

Second, Mr. Noonan is suggesting that since toll and special access are contributing an adequate margin, then there is no need to raise switched access rates to cover cost. In other words, Mr. Noonan is suggesting toll and special access should subsidize switched access to "continue competition in U S WEST territory".<sup>7</sup>

Thirdly, the reason Mr. Noonan calculates such a high number on page 5, line 12 of his testimony is that the \$12.5 million in interexchange carrier revenue includes both switched and special access.

**Q. DOES DIVIDING MINUTES INTO TOTAL REVENUE REQUIREMENTS PROVIDE A PROPER IMPUTATION?**

**A.** Yes, the imputation will be handled properly as long as the rules and the Commission computer model are followed. All interexchange carriers and imputed U S WEST toll service will pay the same rate for switched access as long as the total revenue requirement as defined by the rules is divided by the sum of IXC and imputed U S WEST switched access minutes. The computer model, as developed by the Staff in TC91-040A, was designed to handle the imputation concerns in switched access ratemaking. Mr. Noonan is simply wrong when he says "dividing combined minutes into total revenue requirements does not yield a proper imputation calculation"<sup>8</sup>

**Q. WHAT EXPENSES DOES MR. NOONAN ALLOCATE TO INTEREXCHANGE CARRIER COSTS?**

<sup>7</sup> See Noonan direct testimony page 5, line 18.

<sup>8</sup> See Noonan direct testimony page 5, line 13.

is only a small part of marketing and customer service. The South Dakota rules correctly allocate a portion of these costs to switched access and Mr. Noonan should recognize the same. Without U S WEST's integrated network, Mr Noonan's company could not serve its customers.

**Q. WHAT IS INCORRECT IN MR. NOONAN'S ANALYSIS OF DEPRECIATION EXPENSE?**

**A.** Mr. Noonan makes two major errors in his prediction that U S WEST's South Dakota plant will be fully depreciated in about 5 years.<sup>12</sup>

First, he fails to recognize that U S WEST will continue to add millions in new investment for years to come. I have attached Schedule 1 to my rebuttal testimony to show the five year history 1991 through 1995. This chart shows that plant in service (gross investment) in South Dakota has been trending upwards. However, net plant (plant in service less accumulated depreciation) and depreciation expense remain relatively flat over this five year period. Since depreciation expense is simply a recognition of the cost for a prior capitalized expenditure in the current accounting period, adding investment will incrementally increase depreciation expense.

Secondly, in Mr. Noonan's calculation, he mismatches an intrastate rate base of \$226 million with a total state depreciation expense of \$44 million. This distorts his already improper prediction by further shortening his calculated life

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<sup>12</sup> Jerry Noonan direct testimony page 6, lines through 13

1 Q. WHAT IS THE SUMMARY OF YOUR REBUTTAL TESTIMONY?

2 A. Mr. Noonan's switched access analysis should not be used for ratemaking in  
3 South Dakota.

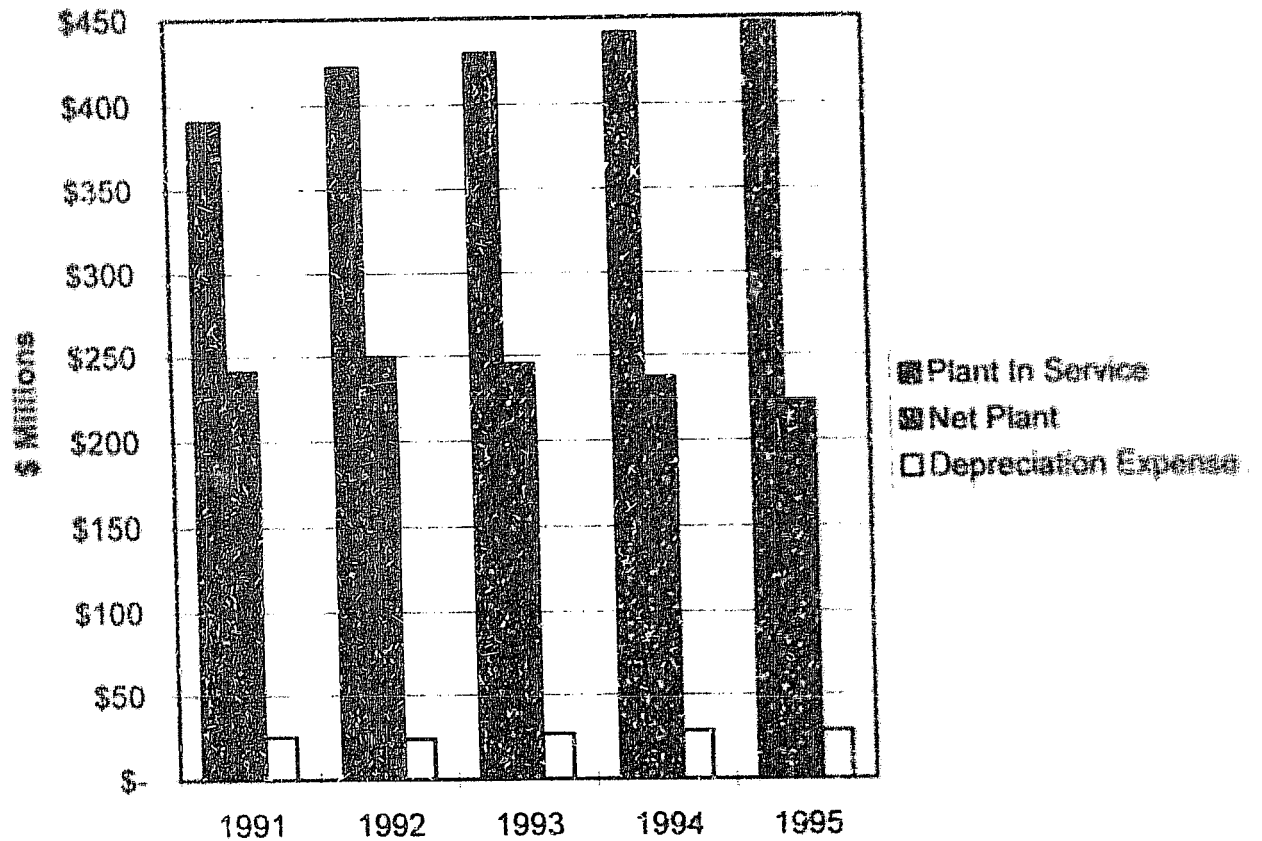
- 4 • Most importantly, his analysis did not follow the PUC switched access  
5 rules.
- 6 • His cost allocation is based upon an access revenue factor of 7.88%,  
7 which was calculated using total 14 state U S WEST revenues, and this  
8 factor is not related to the actual cost of providing switched access  
9 service in South Dakota.
- 10 • His analysis further mismatches IXC access costs and U S WEST  
11 imputed minutes from long distance.
- 12 • Therefore his access revenue requirement per minute calculation is  
13 inaccurate, is based upon inconsistencies, and bears no relationship to  
14 U S WEST's actual costs incurred to provide switched access service  
15

16 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

17 A. Yes  
18

Schedule 1

### Intrastate - South Dakota



CERTIFICATE OF SERVICE

I hereby certify that on this 3<sup>rd</sup> day of September, 1997, an original and ten copies of the foregoing REBUTTAL TESTIMONY OF BARBARA M. WILCOX and REBUTTAL TESTIMONY OF WAYNE CULP was sent via over-night delivery to:

William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
State of South Dakota  
500 East Capitol Avenue  
Pierre SD 57501

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SEP 04 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

FAX Received SEP 03 1997

Also, a true and correct copy was forwarded via over-night delivery, addressed as follows:

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In addition, a true and correct copy was forwarded via courier to the following:

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U S WEST Communications, Inc.



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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

U S WEST COMMUNICATIONS, INC.

REBUTTAL TESTIMONY

OF

BARBARA M. WILCOX, PH. D.

FAX Received SEP 03 1997

South Dakota Public Utilities Commission  
Docket No. TC 96-107  
Filed September 3, 1997



9874

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IDENTIFICATION OF WITNESS

1  
2  
3 Q. PLEASE STATE YOUR NAME, PRESENT POSITION AND PLACE OF  
4 EMPLOYMENT.

5 A. My name is Barbara M. Wilcox. I work for U S WEST Communications, Inc.  
6 ("U S WEST" or "Company")<sup>1</sup>. My title is Director - Product and Market Issues.  
7 My responsibilities focus on regulatory strategy and advocacy for U S WEST's  
8 products and services. My business address is 1801 California St., Denver,  
9 Colorado.

10  
11 Q. PLEASE DESCRIBE YOUR QUALIFICATIONS AND EXPERIENCE.

12 A. I have been a member of U S WEST's (formerly Mountain Bell) staff since 1980,  
13 working in the areas of market research and analysis, pricing and product  
14 management. Before joining Mountain Bell, I held college and university faculty  
15 positions and was a consultant in the fields of market research, behavioral  
16 research and psychology. I earned a B.A. degree Magna cum laude in  
17 psychology from Colorado College. I earned M.A. and Ph.D. degrees in  
18 experimental psychology from Brown University as a National Science  
19 Foundation Fellow.

20  
21 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS OR ANY OTHER  
22 COMMISSION?

23 A. Yes, I appeared before this Commission in the previous hearings held in this  
24 docket. I have also testified in South Dakota in Dockets No. TC 97-006 and TC

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<sup>1</sup> For the sake of this testimony, all references to U S WEST Communications Group, Inc., and U S WEST refer exclusively to the U S WEST Communications Group, Inc. and have no connection to the U S WEST Media Group or its subsidiaries.

1 91-040. In addition, I have filed written testimony and/or appeared as an expert  
2 witness for U S WEST Communications before the Public Utilities Commissions  
3 in Arizona, Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico,  
4 Oregon, Utah, Washington and Wyoming.

5  
6 **PURPOSE OF TESTIMONY**  
7

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 **A.** The purpose of my testimony is to respond to testimony of TAG witnesses Mr.  
10 Susskind, Mr. Thurman and Mr. Simmons regarding the impact of access prices.

11  
12 **Q. ARE YOU SAYING THAT U S WEST'S INCREASE IN SWITCHED ACCESS**  
13 **PRICES HAS NO IMPACT ON CUSTOMERS?**

14 **A.** No, of course not. Any price change can have an impact on customers.  
15 However, I believe the Commission needs to understand the impact in its  
16 appropriate perspective. Therefore, in response to the testimony presented by  
17 TAG, I am presenting additional data to help put the TAG testimony into  
18 perspective. To do that, I present data on two basic points. First, I present  
19 information on the status of competition in other states in which U S WEST has  
20 switched access rates comparable to those in South Dakota. Second, I present  
21 data concerning the extent to which South Dakota carriers' long distance  
22 business is limited to intrastate service.  
23

COMPARISON OF SOUTH DAKOTA TO SIMILAR STATES WITH SIMILAR ACCESS

PRICES

**Q MR. SIMMONS AND MR. THURMAN HAVE EXPRESSED CONCERN U S WEST'S SWITCHED ACCESS PRICES WILL INHIBIT COMPETITION IN SOUTH DAKOTA'S LONG DISTANCE MARKET. DO YOU HAVE ANY INFORMATION REGARDING THE STATE OF COMPETITION IN OTHER SIMILAR STATES WITH ACCESS RATES SIMILAR TO U S WEST'S CURRENT SOUTH DAKOTA RATES?**

**A.** Yes, I do. I have obtained the number of long distance carriers who are certified to provide service in three states. The following table gives the number of carriers competing in each of these states as well as the current weighted average rate per access minute-of-use.

	Number of Certified Long Distance Carriers	U S WEST Current Switched Access Price (Average Price per Minute)
New Mexico	210	5.9 cents
North Dakota	274	6.4 cents
South Dakota	194	6.4 cents

The access prices for South Dakota were, of course, increased to their current level in June of this year. The other two states have had access prices at or close to their current levels for many years.

**Q WHY HAVE YOU CHOSEN NORTH DAKOTA AND NEW MEXICO AS STATES TO COMPARE WITH SOUTH DAKOTA?**

1 A First, I looked for states that had access prices at levels similar to U S WEST's  
2 current prices in South Dakota. Second, I looked for states with similar  
3 characteristics to South Dakota. South Dakota is a relatively small state in terms  
4 of population, so I looked for other small states, which North Dakota and New  
5 Mexico both are. North Dakota is also a neighboring state with geographical and  
6 economic characteristics similar to South Dakota. New Mexico shares with  
7 South Dakota the characteristic of being a single-LATA state.  
8

9 Q WHAT IS THE SIGNIFICANCE OF THIS INFORMATION ABOUT THESE  
10 THREE STATES?

11 A The significance is that these three states of similar size and circumstances all  
12 have roughly comparable numbers of carriers competing for intrastate long  
13 distance business. North Dakota is the state with the largest number of long  
14 distance carriers, and it has never had access rates as low as South Dakota has  
15 had. South Dakota, with its long history of lower access charges, actually has  
16 the smallest number of long distance carriers of the three states. Clearly, access  
17 price levels are not the predominant determinant of the number of carriers which  
18 find it to be profitable to operate in a given state.  
19

20 SOUTH DAKOTA CARRIERS' BUSINESS INCLUDES BOTH INTERSTATE AND  
21 INTRASTATE LONG DISTANCE  
22

23 Q PLEASE DESCRIBE THE INFORMATION YOU ARE PRESENTING IN THIS  
24 SECTION OF YOUR TESTIMONY.

25 A I am presenting information that I obtained by reviewing the total switched  
26 access traffic that U S WEST sells in the state of South Dakota, for both  
27 interstate and intrastate calling. I further looked at the breakdown of that total

1 traffic between interstate and intrastate calling. The customary measure used in  
2 the industry to quantify that breakdown is percent interstate usage (PIU), and I  
3 reviewed the PIU statistics for the South Dakota carriers. I reviewed these data  
4 for a recent three-month period, May through July of 1997.

5  
6 **Q. WHY IS IT RELEVANT TO LOOK AT BOTH INTERSTATE AND INTRASTATE**  
7 **SWITCHED ACCESS TRAFFIC FOR SOUTH DAKOTA?**

8 A. It is relevant because Mr. Susskind and Mr. Thurman both testified that the TAG  
9 companies, being relatively small, are heavily impacted by the access price  
10 increase. They suggest that larger carriers are more likely to have significant  
11 amounts of business in addition to their South Dakota intrastate business, and  
12 therefore the effects of the price increase would be more diluted. The implication  
13 is that small carriers would have business that is very heavily concentrated on  
14 South Dakota intrastate long distance. A very quick way to check the  
15 reasonableness of that implication is to look at the total interstate and intrastate  
16 switched access traffic of the carriers operating in South Dakota. The extent to  
17 which a carrier has interstate calling originating and terminating in South Dakota  
18 is one indication of the extent to which its business extends beyond South  
19 Dakota intrastate long distance.

20  
21 **Q. WHAT DID YOU LEARN FROM YOUR REVIEW OF THE TOTAL TRAFFIC**  
22 **AND THE PIU STATISTICS?**

23 A. I learned that overall, the PIU across all South Dakota carriers is 81%. This  
24 means that, on average, South Dakota carriers have much more interstate  
25 business than they have intrastate business. In fact, less than 20% of the traffic  
26 is intrastate, and the rest of the traffic either originates or terminates in another  
27 state.

1  
2 Next, I reviewed the PIU of each individual carrier. These numbers are  
3 confidential to each carrier, and I therefore am not using the specific numbers in  
4 this testimony. I can summarize by saying that among the small carriers I found  
5 wide variation in PIU, with some as high as 100%. Only 13% of the carriers had  
6 PIU of less than 50%. In other words, for the vast majority (87%) of the carriers,  
7 less than half of their South Dakota business is intrastate and over half is  
8 interstate.

9  
10 The PIUs of the four carriers making up the TAG group are no different from the  
11 pattern I have described. Some of the TAG carriers have PIUs in the ninety-  
12 percent range, indicating a very small portion of their South Dakota long distance  
13 traffic is intrastate.

14  
15 Q. WHAT DO YOU CONCLUDE FROM YOUR REVIEW OF THESE DATA?

16 A. I conclude that for most South Dakota carriers, both large and small, the  
17 interstate portion of their business is much larger than the intrastate portion of  
18 their business. This is further information that the Commission can use to add  
19 perspective to the impact of U S WEST's switched access price increase.

20  
21 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

22 A. Yes, it does.



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September 3, 1997

SEP 03 1997

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
State of South Dakota  
500 East Capitol  
Pierre, SD 57501

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Re: TC 96-107  
IN THE MATTER OF THE ESTABLISHMENT  
OF SWITCHED ACCESS RATES FOR US  
WEST COMMUNICATIONS, INC.

Dear Mr. Bullard:

Enclosed please find hand delivered to you, original and 10  
copies of the following testimony submitted by the  
Telecommunications Action Group (TAG):

1. Rebuttal Testimony of W. Thomas Simmons.
2. Rebuttal Testimony of Fred Thurman, and
3. Rebuttal Testimony of Howard Susskind.

I also enclose copies of the first page of each document for  
you to date stamp.

I also enclose original Certificate of Service. Please file  
the same.

Thank you.

Very truly yours,  
RITER, MAYER, HOFER, WATTIER &  
BROWN, LLP

By: 

RCR Jr-wb

Enclosures

cc: W. Thomas Simmons

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SEP 03 1997

BEFORE THE PUBLIC UTILITIES COMMISSION SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ESTABLISHMENT ) REBUTTAL TESTIMONY OF  
OF SWITCHED ACCESS RATES FOR U.S. ) W. THOMAS SIMMONS  
WEST COMMUNICATIONS, INC. ) TC 96-107

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is W. Thomas Simmons. My business address is  
3 410 S. Phillips Avenue, Sioux Falls, South Dakota 57102.

4 Q. WHAT IS YOUR OCCUPATION AND WHO ARE YOU REPRESENTING?

5 A. I am Vice President and General Manager of Midco  
6 Communications of Sioux Falls, South Dakota, and also Vice  
7 President of the Telecommunications Action Group (TAG), which is a  
8 coalition of certified telecommunication companies operating in  
9 South Dakota, which coalition has been granted authority to  
10 intervene in this matter.

11 Q. MR. SIMMONS, YOU HAVE REVIEWED PREFILED TESTIMONY OF  
12 THE COMMISSION STAFF AND U.S. WEST, HAVE YOU NOT?

13 A. Yes I have.

14 Q. IN HIS TESTIMONY, GREGORY RISLOV OF THE PUC STAFF  
15 SPEAKS OF A 1993 STIPULATION ON PAGE 11, LINE 19. WAS TAG A PARTY  
16 TO THAT STIPULATION?

17 A. No.

18 Q. MR. RISLOV ALSO TESTIFIES THAT A RESELLER OPERATING  
19 PRIMARILY IN SOUTH DAKOTA WILL SEE A DOUBLING OF ACCESS COSTS AND  
20 THAT COSTS ARE A VERY SIGNIFICANT PORTION OF THE RESELLER'S COSTS  
21 DO YOU AGREE WITH THIS STATEMENT, AND IF SO, WHY?

22 A. Yes I agree that the increase in access rates will



1 have a very significant affect upon TAG members and other South  
2 Dakota based resellers operating primarily in South Dakota. As he  
3 mentions, they will be significant because our total costs are  
4 generally only incurred in South Dakota. Hence, we cannot transfer  
5 them among costs incurred in other states. As I mentioned in my  
6 prior testimony, this not only has an immediate detrimental affect  
7 on South Dakota resellers, but likewise upon our small business  
8 customers.

9 Q. ON PAGE 7 OF MR. RISLOV'S PREFILED TESTIMONY, HE  
10 SUGGESTS THAT WHILE THE ACCESS CHARGE WOULD INCREASE, IT WOULD ONLY  
11 MEAN A \$3.00 INCREASE. DO YOU FIND THIS STATEMENT OF PARTICULAR  
12 IMPORTANCE TO THE ISSUES INVOLVED? WHY.

13 A. Mr. Rislov is very specific that reference in his  
14 testimony is made only to residential service. That is because the  
15 real impact will be felt by South Dakota small businesses who make  
16 a substantial number of intrastate long distance calls as part of  
17 their necessary business efforts. This rate increase could amount  
18 to \$50.00 to \$75.00 per month on many phone bills for small  
19 businesses. Since long distance and local service are on separate  
20 billings, this would be a serious and significant "rate shock" to  
21 small businesses reviewing and paying their long distance charges.

22 Q. ON PAGE FOUR OF HIS TESTIMONY MR. RISLOV SEEMS TO  
23 SUGGEST THAT AN INCREASE COULD, IN CERTAIN CIRCUMSTANCES, BE IN THE  
24 CUSTOMERS' BEST INTERESTS. DO YOU AGREE WITH THAT?

25 A. No. I believe that the customers whom TAG members  
26 primarily serve, that being small businesses in South Dakota, will

1 be severely affected, and that an access rate increase is not in  
2 their best interests. Small businesses, and particularly those in  
3 our small communities, are very dependent upon fair and reasonable  
4 rates for their intrastate calls. Competition in the  
5 telecommunications industry has been a necessary partner with them  
6 in their efforts to provide quality services at reasonable costs.  
7 Small businesses have not received commercial property tax  
8 reductions like residential customers have experienced; hence, this  
9 substantial increase would merely add another fixed cost upon those  
10 who are least able to handle them at this time.

11 Q. DO YOU BELIEVE THAT THE RATE OF 6.0905 SUGGESTED BY  
12 HARLAN BEST ON PAGE NINE OF HIS TESTIMONY IS IN THE PUBLIC'S BEST  
13 INTEREST, AND WHY?

14 A. No, I do not believe it is the public's best  
15 interest. The immediate impact upon small business consumers is  
16 obvious and previously stated. The ultimate impact evidenced by  
17 possible elimination of competition or reduction of its  
18 effectiveness, will ultimately harm the public even more.

19 Q. ON PAGE SEVEN OF MR. RISLOV'S TESTIMONY, HE STATED  
20 THAT LOWER ACCESS RATES WILL PROMOTE RESALE COMPETITION, BUT WILL  
21 INHIBIT FACILITIES-BASED COMPETITION. DO YOU AGREE WITH THAT?

22 A. No.

23 Q. WHY?

24 A. It is not in the public interest to force facilities  
25 based competition through rate increases which prevent resellers  
26 from continuing to operate while developing facilities. Also, the

1 South Dakota based resellers (TAG members) may be the most likely  
2 to develop facilities in their home area if not driven out of  
3 business by radically increased costs of providing service. Video  
4 Communications has already made a commitment to facilities based  
5 development. A new switch, capable of providing long distance and  
6 local switching has been ordered.

7 Q. DOES THIS COMPLETE YOUR TESTIMONY?

8 A. Yes.

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BEFORE THE PUBLIC UTILITIES COMMISSION SOUTH DAKOTA PUBLIC  
OF THE STATE OF SOUTH DAKOTA UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT ) TC 96-107  
OF SWITCHED ACCESS RATES FOR US ) CERTIFICATE OF SERVICE  
WEST COMMUNICATIONS, INC. )

I, Robert C. Riter, Jr., certify that true and correct  
copies of

1. Rebuttal Testimony of W. Thomas Simmons,
2. Rebuttal Testimony of Fred Thurman, and
3. Rebuttal Testimony of Howard Susskind

were mailed by first class mail to each of the following on the  
3rd day of September, 1997:

William P. Heaston  
Senior Attorney  
US West Communications, Inc.  
1801 California, Room 5100  
Denver, CO 80202

Robert G. Marmet  
Attorneys at Law  
P. O. Box 269  
Centerville, SD 57014

Thomas J. Welk  
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Attorneys at Law  
P. O. Box 5015  
Sioux Falls, SD 57117-5015

Donald A. Low  
Senior Attorney  
Sprint Communications Company  
8140 Ward Parkway SE  
Kansas City, MO 64114

and that true and correct copies of said documents were hand  
delivered to each of the following on the 3rd day of September,  
1997:

John S. Lovald  
Attorney at Law  
P. O. Box 66  
Pierre, SD 57501

Bob Sahr  
David A. Gerdes  
Attorneys at Law  
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Pierre, SD 57501

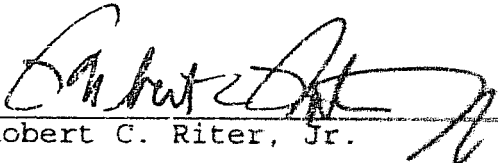
Richard P. Tieszen  
Attorney at Law  
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Pierre, SD 57501

Ms. Karen Cremer  
Public Utilities Commission  
500 E. Capitol  
Pierre, SD 57501

and that true and correct copies of the above were faxed to the  
following on the 3rd day of September, 1997:

William P. Heaston - 303-295-7069

Thomas Welk/Tamara Wilka - 605-334-0618  
Robert Marmet - 605-263-3995  
Donald Low - 913-624-5681

  
Robert C. Riter, Jr.

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT ) REBUTTAL TESTIMONY OF  
OF SWITCHED ACCESS RATES FOR U.S. ) FRED THURMAN  
WEST COMMUNICATIONS, INC. ) TC 96-107

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Fred Thurman. My business address is 110  
3 B. Phillips Avenue, Suite 202, Sioux Falls, South Dakota 57102.

4 Q. WHAT IS YOUR OCCUPATION AND WHO ARE YOU REPRESENTING?

5 A. I am President of FirstTel of Sioux Falls, South  
6 Dakota, and also Secretary of the Telecommunications Action Group  
7 (TAG), which is a coalition of certified telecommunication  
8 companies operating in South Dakota, which coalition has been  
9 granted authority to intervene in this matter.

10 Q. MR. THURMAN, HAVE YOU REVIEWED THE PREFILED TESTIMONY  
11 OF THE COMMISSION STAFF AND U.S. WEST?

12 A. Yes I have.

13 Q. ON PAGE 7 OF MR. RISLOV'S TESTIMONY, HE STATES THAT  
14 LOWER ACCESS RATES WILL INHIBIT FACILITIES BASED COMPETITION. DO  
15 YOU AGREE WITH THAT?

16 A. No.

17 Q. WHY.

18 A. Even with the intrastate access rate as it now  
19 exists, I think competitors can provide the same services for even  
20 less. Our company is proceeding with plans for facilities with  
21 that attitude.

22 Q. WHY DO YOU BELIEVE THAT U.S. WEST'S COMPETITORS WILL



1 BUILD THEIR OWN FACILITIES?

2 A. Because U.S. West's share of the market is decreasing  
3 they will not need as many new facilities. Additionally, their  
4 competitors want to decrease reliance upon U.S. West and also  
5 attempt to provide the services at reasonable costs. Hence, in  
6 this competitive environment, new competitors will be providing  
7 services and facilities or forming alliances to do so as long as  
8 those businesses are vigorous. If the market retains its healthy  
9 competitive spirit, companies similar to TAG members will have  
10 ample reason to provide new services and facilities.

11 Q. DO YOU BELIEVE THAT THE RATE SUGGESTED IN THE PUC  
12 STAFF'S TESTIMONY IS IN THE PUBLIC'S INTEREST?

13 A. No. I do not believe the rate would be in the  
14 public's interest. It will severely impact competition, thereby  
15 reducing opportunities for new, innovative procedures and  
16 construction of new facilities. If this occurs, the public will  
17 suffer through the lack of effective competition in the market  
18 place.

19 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

20 A. Yes.

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT ) PREFILED REBUTTAL  
OF SWITCHED ACCESS RATES FOR U.S. ) TESTIMONY OF HOWARD  
WEST COMMUNICATIONS, INC. ) SUSSKIND TC 96-107

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Howard Susskind. My business address is  
8627 Ordinary Way, Suite 100, Annandale, VA 22003.

Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE PREFILED  
TESTIMONY FROM U.S. WEST COMMUNICATIONS AND THE PUBLIC UTILITIES  
STAFF?

A. Yes.

Q. IN PARTICULAR, DID YOU REVIEW THE TESTIMONY OF  
GREGORY RISLOV?

A. Yes.

Q. IN HIS TESTIMONY MR. RISLOV DISCUSSES U.S. WEST'S  
INTRASTATE ACCESS RATE MAKING IN TERMS OF RECOVERY OF U.S. WEST'S  
TOTAL NETWORK COSTS ACROSS A WIDE VARIETY OF SERVICES, ALL SHARING  
A COMMON NETWORK. DO YOU BELIEVE THIS IS A PROPER APPROACH TO BE  
TAKEN TO THE ISSUES INVOLVED?

A. No. While this is an acceptable way of viewing the  
physical network, great care must be taken with economic  
interpretation, in order to avoid detriments to competition. When  
Mr. Rislov suggests that the increased switched access revenues  
allow for correspondingly less expensive local service, what his  
analysis overlooks is the competitive impact of the allocation  
process. Because U.S. West controls both market price for retail

1 intralATA toll, and the price of access for interconnections. it  
2 "controls" the profits and competitive position of long distance  
3 carriers who offer intralATA toll services. To state that a  
4 negative revenue shift from one product must be borne by a positive  
5 shift to another is merely an academic exercise. (Rislov pp. 4 and  
6 5)

7 Q. WHAT DO YOU FORESEE AS THE LIKELY COMPETITIVE OUTCOME  
8 OF A 100% INCREASE IN INTRASTATE SWITCHED ACCESS COSTS?

9 A. i. The end to end cost of intrastate switched access  
10 is increased from \$6.28 to \$12.56.

11 ii. U.S. West makes no corresponding increase in its  
12 base rate intralATA toll rates, nor in its highly discounted volume  
13 and term intralATA toll plans, some of which are less than \$.129  
14 per minute.

15 iii. The large, national IXC's may not increase their  
16 retail interLATA toll rates for business customers, because they  
17 are price constrained by U.S. West's aggressive retail discount  
18 plans. While this means IXC's will lose money on every incremental  
19 minute of intralATA toll, they can do so in the short run because  
20 services sold in South Dakota comprise a very small portion of  
21 their overall revenues and interLATA toll makes up a very small  
22 portion of their South Dakota services.

23 Q. WHAT HAPPENS TO COMPANIES SIMILAR TO THE MEMBER  
24 COMPANIES OF TAG?

25 A. Most companies will be unable to raise rates across  
26 the board because of the short term actions of U.S. West and the

1 nationwide IXC's, and will likely lose money on every incremental  
2 unit of interLATA toll. Because South Dakota interLATA toll  
3 revenues make up a significant portion of their revenues, including  
4 service provided under contract, the actual affect on these  
5 companies' net income will be disastrous, as detailed in our  
6 initial testimony. It is likely that upon termination of any  
7 contracts, those companies could exit from the retail intralATA  
8 toll business; in the approaching world of full service bundling,  
9 any carrier which does not offer full services would have less  
10 success offering any service.

11 Q. WHAT DO YOU SUGGEST WILL HAPPEN IN THE SHORT RUN  
12 SHOULD A RATE INCREASE SUCH AS IS SUGGESTED BY U.S. WEST OCCUR?

13 A. In the short run, rather than the cost increase  
14 suggested by Mr. Rislov, we will see an elimination of many  
15 competitive alternatives. (Rislov p. 7)

16 Q. WHAT DO YOU BELIEVE WILL OCCUR IN THE LONG RUN?

17 A. In the long run, the reduction of competitive  
18 alternatives may lead to cost increases well above estimates  
19 suggested by Mr. Rislov even in the residential market, as well as  
20 a dearth of new products and services. Also, in the long run,  
21 large nationwide carriers may likely feel the price squeeze and  
22 they may too may withdraw from the interLATA toll market, or at  
23 least cease marketing it aggressively.

24 Q. MR. RISLOV SUGGESTS THAT IF ACCESS RATES ARE NOT  
25 INCREASED FACILITIES BASED COMPETITION MAY NOT OCCUR. (RISLOV P.  
26 7) DO YOU AGREE WITH THAT?

1 A. I do not believe it is in the public's interest to  
2 uneconomically encourage facility based competition with  
3 artificially high prices far in excess of actual costs. This sends  
4 out false signals to the market and actually results in a  
5 misallocation of capital.

6 Q. DO YOU AGREE WITH MR. RISLOV'S SUGGESTIONS RELATING  
7 TO A TWO PART RATE STRUCTURE? (RISLOV P. 8)

8 A. It may be that there is a non-traffic sensitive  
9 portion of cost which should be assessed directly to end users via  
10 a per line charge. However, much care should be taken with the  
11 actual price level of these charges, and they must be priced the  
12 same for all lines.

13 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

14 A. Yes.

LAW OFFICES  
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R. C. RITER (1947-1994)  
E. B. MAYER  
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ROBERT C. RITER, JR.  
GARY L. WATTIER  
JAMES L. BROWN  
DAVID A. PRITTS

September 4, 1997

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
State of South Dakota  
500 East Capitol  
Pierre, SD 57501

Re: TC 96-107  
IN THE MATTER OF THE ESTABLISHMENT  
OF SWITCHED ACCESS RATES FOR US  
WEST COMMUNICATIONS, INC.

Dear Mr. Bullard:

Enclosed please find hand delivered to you, original and 10  
copies of ERRATA Page for Prefiled Rebuttal Testimony of Howard  
Susskind. I also enclose copy of the first page of said document  
for you to date stamp.

I also enclose original Certificate of Service. Please file  
the same.

Thank you.

Very truly yours,

RITER, MAYER, HOFER, WATTIER &  
BROWN, LLP

By: 

RCR Jr-wb

Enclosure

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SEP 04 1997

IN THE MATTER OF THE ESTABLISHMENT ) TC 96-107  
OF SWITCHED ACCESS RATES FOR US ) ERRATA PAGE FOR  
WEST COMMUNICATIONS, INC. ) PREFILED REBUTTAL  
TESTIMONY OF HOWARD  
SUSSKIND

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Howard Susskind. My business address is  
8622 Ordinary Way, Suite 100, Annandale, VA 22003.

Q. IN YOUR PREFILED REBUTTAL TESTIMONY WERE THERE SOME  
ERRORS IN TERMINOLOGY?

A. Yes.

Q. WHAT WERE THOSE ERRORS?

A. The errors were as follows:

1. Page two, line 9, "end to end" should read "end-to-  
end".

2. Page two, line 10, "\$6.28 to \$12.56" should read  
"\$6.28¢ to 12.56¢".

3. Page two, line 16, "interLATA" should read  
"intraLATA".

4. Page two, line 25, after the word "raise" insert  
"intraLATA toll".

5. Page three, line 2, replace "interLATA" both places  
with "intraLATA".

6. Page three, line 22, replace "interLATA" with  
"intraLATA".

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT ) TC 96-107  
OF SWITCHED ACCESS RATES FOR US ) CERTIFICATE OF SERVICE  
WEST COMMUNICATIONS, INC. )

I, Robert C. Riter, Jr., certify that true and correct copy of ERRATA Page for Prefiled Rebuttal Testimony of Howard Guenkind was mailed by first class mail to each of the following on the 4th day of September, 1997:

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John S. Lovald  
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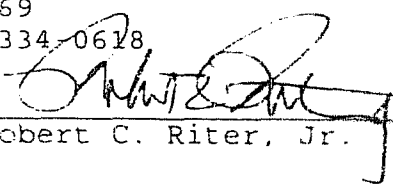
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Ms. Karen Cremer  
Public Utilities Commission  
500 E. Capitol  
Pierre, SD 57501

and that a true and correct copy of the above was faxed to the following on the 4th day of September, 1997:

William P. Heaston - 303-295-7069  
Thomas Welk/Tamara Wilka - 605-334-0618

  
Robert C. Riter, Jr.



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SOUTH DAKOTA PUBLIC  
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R. C. RITER (1984-1997)  
R. C. RITER  
ROBERT M. HOFER  
ROBERT C. WATTIER, JR.  
JERRY L. WATTIER  
JERRY L. BROWN

BARBARA A. PFENGL

September 4, 1997

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
State of South Dakota  
500 East Capitol  
Pierre, SD 57501

Re: TC 96-107  
IN THE MATTER OF THE ESTABLISHMENT  
OF SWITCHED ACCESS RATES FOR US  
WEST COMMUNICATIONS, INC.

Dear Mr. Bullard:

Enclosed please find hand delivered to you, original and 10  
copies of Brief of Telecommunications Action Group (T.A.G.) and  
Request for Refund per SDCL 49-31-12.4(5) I also enclose copy of  
the first page of said document for you to date stamp.

I also enclose original Certificate of Service. Please file  
the same.

Thank you.

Very truly yours,

RITER, MAYER, HOFER, WATTIER &  
BROWN, LLP

By 

RCE Jr-wb

Enclosures

cc: W. Thomas Simmons

9898  
9898

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT ) TC 96-107  
OF SWITCHED ACCESS RATES FOR US ) BRIEF OF TELECOMMUNICATIONS  
WEST COMMUNICATIONS, INC. ) ACTION GROUP (T.A.G.) AND  
REQUEST FOR REFUND PER  
SDCL 49-31-12.4(5)

COMES NOW the Telecommunications Action Group,  
hereinafter T.A.G., by and through its attorneys and submits the  
following Pre-Hearing Brief and Request for Refund in the above-  
entitled matter, scheduled for hearing September 10th through  
12th, 1997.

PRELIMINARY STATEMENT

References to Pre-filed testimony shall be referenced  
by Witness name, followed by the page number. References to the  
October 9-10, 1996 hearing transcript are denoted by "TR"  
followed by the page number. References to the Administrative  
Record shall be denoted by "AR" followed by the appropriate page  
number. References to the December 9, 1996 hearing shall be  
denoted by "HT" followed by the appropriate page number.  
References to the Commission's Appellate Brief filed before Judge  
Zinter shall be denoted by "PUC Brief" followed by the  
appropriate page number.

STATEMENT OF FACTS

On June 24, 1996, U.S. West filed a cost study with the  
Public Utilities Commission, seeking to increase switched access  
rates from 3.14 cents to 6.4 cents per minute. (AR at 1) At the  
October 9-10, 1996 hearing, U.S. West changed its request to a  
switched access rate of 6.15 cents per minute. (Finding of Fact

XVIII The Commission heard testimony on October 9th and 10th, 1996. (AR 541-912) On December 9, 1996, the Commission entered an Order reopening the docket for the taking of additional evidence. On January 10, 1997, the Commission entered an Order for Notice of Procedural Schedule, and scheduled further hearings on March 19, 1997 through March 21, 1997. On January 16, 1997, AT&T moved the Commission to disapprove U.S. West's application and to close the docket. TAG joined this motion. On January 23, 1997, a hearing was held on the motion. (AR 1269) U.S. West had been given several opportunities to present further evidence, (AR at 1239-1246, 1235, 1248) but it indicated that it had no more evidence to introduce and wanted a decision by the Commission.

The Commission entered its written decision on January 31, 1997. (AR 1313) U.S. West filed an appeal to the circuit court. On appeal, Judge Zinter remanded the case to the Commission to make further factual findings to support its conclusions of law but did not reverse any of the Commission's findings of fact. On June 26, 1997, U.S. West unilaterally implemented the rate it sought, 6.14 cents. A hearing has been set for September 10th through the 12th, 1997.

#### ARGUMENT

Intervenor T.A.G. is comprised of four locally owned telecommunications carriers whose customers reside primarily in South Dakota. (TR at 188-89) Switched access costs represent approximately 50 percent of the direct costs of doing business for T.A.G. members. (TR at 190; 224; 248) The increase sought

and later implemented by U.S. West effectively doubled the switched access rates for carriers operating in South Dakota.

(AR at 465); (TR at 256); (AR at 450)

Under SDCL 49-31-12.4(3), the burden is on the company proposing the rate change to show it is "fair and reasonable." "Fair" is something "Just; equitable; even-handed[.]" Black's Law Dictionary, 5th ed. at 307. "Reasonable" is defined as something "Fair, proper, just, moderate, suitable under the circumstances." Black's, at 656. SDCL 49-31-12 also requires that the rate be "reasonable." The Commission "may change or revise any switched access rate or price in accordance with SDCL 49-31-12 and 49-31-12.4." ARSD 20:10:27:07. Additionally, SDCL 49-31-10 requires companies to provide access facilities at reasonable rates. The statute also speaks of methods designed to determine fair and reasonable rates, but it does not mandate that if the procedure set out by rule is followed the rates are then ipso facto "fair and reasonable". Rather, it is clear that this Commission has the right to review the procedures employed and the result obtained through the use of those procedures, and determine whether it establishes a fair and reasonable rate.

As an administrative agency entrusted to protect the public, this Commission must consider the public interest, especially in light of an increase of this magnitude. "Public service" commissions are generally empowered to, and are created with the intention that they should regulate public utilities insofar as the powers and operations of such utilities affect the

public interest and welfare." Northwestern Bell Telephone Co. v. Chicago and NW Transportation, 245 N.W.2d 639, 642 (S.D. 1976). TAO believes that several factors show that the switched access rate unilaterally implemented by U.S. West is not fair and reasonable, SDCL 49-31-12.4(3), nor in the public interest.

While the Commission has established a cost study model to determine switched access rates, the costs (inputs) used to compute switched access charges are subject to the accounting and ratemaking determinations of the Commission. ARSD 20:10:27:01. The Commission, "if required, [shall] adjust the actual costs [reflected in the historical test year] to reflect changes that are known and measurable." The Commission expressed concern regarding U.S. West's failure to properly audit the inputs into its computer model, and should make appropriate adjustments, as suggested below. The Commission is also authorized, for good cause, to temporarily waive or suspend any commission rule in Chapters ARSD 20:10:27 to 29 when determining proper switched access rates. ARSD 20:10:27:02

U.S. West submitted three cost studies in this docket, and each study called for a lower switched access rate. (AR at

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<sup>1</sup> Staff contends, through the testimony of Robert L. Knadle, that the public interest is served simply by inputting U.S. West data into the computer model. (Knadle at 7) However, this assumes the inputs are correct, and it ignores the fact that so long as an agency supplies a reasoned analysis therefore, it may change its view of what is in the public interest, with or without a change of circumstances. Motor Vehicle MERS Assn. v. State Farm, 463 U.S. 29, 57, 103 S. Ct. 2856, 2874, 77 L. Ed 2nd 443, 466 (1983), cited in Intrastate Telephone Coop. v. PUC, 519 N.W.2d 749, 752 (S.D. 1994).

1996); PUC Brief at 10. When U.S. West submitted its third cost study showing 6.4 cents and the Commission staff countered that ~~some~~ inputs were incorrect and that the rate should be 6.15 cents, U.S. West stated that it was "just not worth it to argue all those issues." (TR at 11) U.S. West agreed to propose a 6.15 cent rate. A review of the inputs by Pat Parker indicated that the rate should be no greater than 5.55 cents. (TR at 329, 330) Staff's latest testimony indicates a 6.09 cent rate is appropriate. (Best at 9) The rate decreased each time the inputs were analyzed--a thorough analysis is likely to reveal a much lower rate. Perhaps more importantly, the analysis by Jerry Noonan confirms that the prior rate is appropriate, with no increase. (Noonan Prefiled Testimony at p. 6)

Several inputs from U.S. West need more scrutiny. The Commission expressed reservations because U.S. West's inputs into the cost study model were not verified.<sup>2</sup> These inputs remain

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<sup>2</sup> At the October, 1996 hearing, the Commission's witness, Harlan Best, did not verify any of the information contained in the reports he used in his analysis, other than comparing ARMIS reports with U.S. West reports. Commission witness Gregory Rislov did not review numbers, perform any validation tests of U.S. West's numbers nor inspect any of their records. PUC Brief at 5. Wayne Culp, U.S. West's witness in presenting its cost study model, "did not develop any of the numbers (inputs) that went into the cost study; the schedules and workup were done by other people." PUC Brief at 4-5. The Commission also found that the testimony of Wayne Culp was not credible. (Finding of Fact XXX). "No witness appeared before the PUC who had dealt with the raw input numbers as used in the cost model either in a role of handling them as a primary source of information or in a role of auditing or verifying them." PUC Brief at 5. The Commission noted adjustments to inputs to the U.S. West cost study made prior to the October, 1996 hearing were not obtained under oath. PUC Brief at 5. The Commission found that there was a "lack of verification of the numbers which went into the cost model[.]"

suspect, despite Staff's further review.<sup>3</sup> For instance, Staff's recommendation calls for a rate of return of 11.5 percent. (Best at 9) However, other Staff testimony indicates that the "rate of return for switched access services was set at 9.7 percent." (Knadle at 5) Why does the rate of return change in 1997 from when the rules were adopted in 1993? Staff apparently anticipated this line of inquiry by including in Staff member Robert Knadle's testimony a calculation for rate of return at 11.0 percent. (Knadle at 6)

Commissioner Schoenfelder expressed concern regarding represetcribed depreciation. (H.T. at 2-4). The amortization of nonrecurring costs is subject to the Commission's determination of "fairness and reasonableness." ARSD 20:10:27:15. The Commission is empowered to adjust inputs accordingly to achieve a fair and reasonable access rate. By eliminating an allowance for represetcribed depreciation, the rate became 5.7 cents using the Commission's model. (Knadle at 5)

At the October, 1996 hearing, testimony of Fred Thurman, President of FirstTel, and Jerry Noonan, Chief stockholder of TeleTech, who are both practicing Certified Public Accountants, indicated the inputs of U.S. West into the cost study model were highly suspect. (Findings of Fact XI) (TR at

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and voted to reopen the docket to take further evidence. (Finding of Fact No. XVIII)

<sup>3</sup> On remand, the Commission ordered staff to review the inputs, and hire a consultant, if necessary. No consultant was hired. (Rislov at 3)

271). Concerns about the inputs were also addressed by AT&T's witness, Patricia Parker. (AR at 423-441) U.S. West did not consider the sale of 55 rural South Dakota exchanges in its cost study. Mr. Thurman questioned U.S. West's use of proceeds from those sales. (TR 204-206); (Finding of Fact XI). Staff has attempted to adjust the inputs based on the sale of the 55 exchanges, but Mr. Noonan's analysis in that regard appears more appropriate. (Noonan Prefiled Testimony at p. 4) Mr. Noonan previously questioned several of the procedures used for deriving the inputs into the model, including depreciation. (TR at 218-220); see (Finding of Fact XVIII; and Noonan p. 6). Commissioner Schoenfelder echoed this criticism, questioning the prescribed depreciation allowance. (H.T. at 2-4) U.S. West conceded that these factors would alter the result of the cost study model.

Jerry Noonan, a certified public accountant, conducted a review of the U.S. West inputs, along with Commission staff. Mr. Noonan will present testimony that a fair and reasonable access rate would be \$0.0303730. (Noonan Prefiled Testimony at p. 6)

Staff attempts to address the public interest issue. Staff assumes that the consumer will only be affected in the form of a \$3.00 per month phone residential bill increase.<sup>4</sup> (Pislov

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<sup>4</sup> However, \$3.00 represents a significant increase when a phone bill is approximately \$22.00 per month, excluding individual long distance usage. This represents the residential charge and not the charges incurred by small South Dakota businesses which are substantially higher. (Simmons, Rebuttal Testimony at p. 2)



at 7); (Knadle at 6). This ignores the impact the rate would have on market competition, and particularly those South Dakota small business consumers. It also ignores the price squeeze effect of the increase on smaller South Dakota companies.

(Susskind at p. 6) The increased rate places TAG members in a price squeeze which may force some members out of business. U.S. West would be able to sell its services at retail more cheaply than TAG members would pay for intrastate toll service from U.S. West. (Susskind at p. 6)

T.A.G. members could not absorb the increase and would be forced to attempt to pass on the increase to their South Dakota customers. (TR at 189; 248; 256) (Finding of Fact XIV). This would greatly impact South Dakotan consumers as T.A.G. members' business is conducted primarily, if not exclusively, in South Dakota. (TR at 232); (TR at 248); (TR at 256); (TR at 194). Staff testimony indicates that South Dakota consumers' phone bills would increase at least \$3.00 per month. (Rislow at 7)

Through competition among T.A.G. members and others in the marketplace, telephone rates for South Dakota consumers are competitive and have been kept relatively low. (TR at 188; 243)

The increase will stifle competition and require many current providers to cease doing business or significantly reduce their operations and ultimately, increase costs for South Dakota consumers. (AR at 442-448)

T.A.G. members were sent impact letters from U.S. West.

which indicated that the proposed switched access rate increase would range from 72 to 124 percent. (TR at 217, 248, 251, 256) (Susskind at p. 3) Two of the four TAG members will experience a negative net income due to the increase, and will likely be forced to cut employees, and subsequently services, and perhaps no longer do business. Large companies could absorb the increase and distribute cost increases among customers in several states. However, smaller South Dakota carriers would be forced to pass on the increase to their South Dakota customers. (AR at 442-448); (AR at 461); (AR at 456); (AR at 465); (AR at 490).

The doubling of switched access rates constitutes "rate shock." In U.S. West's own words, through Attorney Heaston, "access charges are the single largest cost of doing business for a long distance business, and an increase of this magnitude would have a major impact on a carrier's ability to do business in South Dakota." (AR at 467-68) Due to the magnitude of the increase, and the corresponding price squeeze, competition, service quality and prices would suffer. (Susskind at p. 4)

Staff contends that the 1996 Telecommunications Act has not changed switched access rules. The application of the 1996 Telecommunications Act to a state commission's fixing of access rates has not been decided in the courts. In *Iowa Board of Public Utilities, et.al v. Federal Communications Commission*, slip op., no. 96-3321 et. seq. 8th Cir., July 18, 1997 at p. 27, the Court noted:

(27) We leave for another day any determination of whether a specific state

access or interconnection regulation is inconsistent with section 251 or substantially prevents the implementation of section 251 or Part II of the Act.

It is interesting to note that access charges as regulated by the Federal Communications Commission are decreasing. Federal Communications Commission, In the Matter of Access Charge Reform, Docket No. 96-262, at 16-21 (June 17, 1997). Staff previously used FCC regulation as an example of the trends in switched access pricing, but fails to mention recent developments that are moving away from access rates to per line charges. Id. A doubling of the switched access rate in South Dakota goes against the industry trend of decreasing access rates. See Id.

TAG members comprise approximately 16.4 percent of the intrastate business in South Dakota. (Susskind at p. 1). An increase of this magnitude would have an immediate effect on South Dakota consumers, as the rate would have to be passed on to the consumer. For these reasons, the implemented rate should not be allowed to continue. A fair and reasonable rate should be determined. T.A.G. moves and requests that a refund be granted pursuant to SDCL 49-31-12.4(5), for the time during which U.S. West's unilaterally implemented rate has been in effect.

#### CONCLUSION


Even U.S. West's own admissions indicate that switched access rates are the single largest cost of doing business for many companies. U.S. West has failed to meet its burden that the new rate is fair and reasonable. Its own inputs are flawed, and upon closer scrutiny, the actual rate is much lower than that

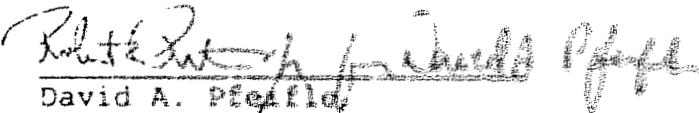
originally proposed. Doubling the switched access is not fair, reasonable, nor in the public interest. Another rate should be set for the reasons set forth above, and appropriate refund granted pursuant to SDCL 49-31-12.4(5).

Respectfully submitted this 30<sup>th</sup> day of September, 1997.

RITER, MAYER, HOFER, WATTIER  
& BROWN, L.L.P.

By:

  
Robert C. Riter, Jr.

  
David A. Pfeiffer

Members of said firm

319 S. Coreau - P. O. Box 280

Pierre, SD 57501-0280

Attorneys for Telecommunications

Action Group (T.A.G.)

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT ) TC 96-107  
OF SWITCHED ACCESS RATES FOR US ) CERTIFICATE OF SERVICE  
WEST COMMUNICATIONS, INC. )

I, Robert C. Riter, Jr., certify that a true and correct copy of Brief of Telecommunications Action Group (T.A.G.) and Request for Refund Per SDCL 49-31-12.4(5) was mailed by first class mail to each of the following on the 3rd day of September, 1997:

William P. Heaston  
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Pierre, SD 57501

Ms. Karen Cremer  
Public Utilities Commission  
500 E. Capitol  
Pierre, SD 57501

and that true and correct copy of the above was faxed to the following on the 3rd day of September, 1997:

William P. Heaston - 303-295-7069  
Thomas Welk/Tamara Wilka - 605-334-5618

  
Robert C. Riter, Jr.

# MEMORANDUM

DATE: September 3, 1997  
TO: Harlan Best, South Dakota Commission Staff  
FROM: Deb Kramer, USWC *DK*  
RE: Delivery of South Dakota Data Requests  
CC: Dianna Massey, USWC

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Enclosed please find two copies of the Supplemental response to data request PUC Set 7, request #15, in South Dakota Docket TCS6-107.. One copy is for the Commission Staff and the other copy is for the PUC.

Please call me at (402) 422-8758 if you have any questions.

LAW OFFICES  
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GLENN W. MARTENS 1881-1983  
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THOMAS C. ADAM  
DAVID A. GERDES  
CHARLES W. THOMPSON  
ROBERT B. ANDERSON  
BRENT A. WILBUR  
TIMOTHY K. ENGEL  
MICHAEL F. SHAW  
ROBERT K. SAHR

September 5, 1997

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SEP 05 1997

William Bullard, Jr.  
Executive Director  
Public Utilities Commission  
State Capitol  
500 East Capitol Avenue  
Pierre, SD 57501

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: IN THE MATTER OF THE ESTABLISHMENT OF SWITCHED ACCESS  
RATES FOR U S WEST COMMUNICATIONS, INC.,  
MCI'S PRETRIAL BRIEF  
DOCKET TC96-107  
Our File: 0175.15

Dear Mr. Bullard:

Enclosed are an original and ten copies of the "Pretrial Brief" in the above entitled matter. Please file this in your usual fashion.

Also enclosed is an extra cover sheet which we would like you to date stamp and return to us in the enclosed self-addressed stamped envelope.

Thank you very much for your assistance. Please feel free to contact me if you have any questions or comments.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP



DAVID A. GERDES

DAG/kf

Enclosures

cc: Michel Murray  
Tim Gates

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SEP 04 1997

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT )  
OF SWITCHED ACCESS RATES FOR U S )  
WEST COMMUNICATIONS, INC., )

DOCKET TC96-107

MCI'S PRETRIAL BRIEF

Pursuant to the Prehearing Order on Reopening Record entered by the Commission on July 3, 1997, MCI Telecommunications Corporation ("MCI") files this pretrial brief in opposition to U S WEST Communications, Inc.'s ("U S WEST") request for an increase in switched access rates.

PRELIMINARY STATEMENT

The Amended Order of Remand was based on the lack of a sufficient record to support the Commission's findings of fact and conclusions of law. The Commission should simply prepare a more detailed record and again deny U S WEST's request.

Ample evidence exists to support a rejection of the proposed increase. First, U S WEST has failed to meet its burden of proof to show that the rate increase is fair and reasonable. The only significant evidence presented by U S WEST is its cost study. U S WEST simply ignores the other statutory requirements. Second, while U S WEST, not the intervenors or the Commission, bears the burden of proof, substantial evidence does exist to determine that the increase will adversely impact South Dakota consumers, businesses, and resellers, large and small.



## ARGUMENT AND AUTHORITIES

1. THE COMMISSION SHOULD AGAIN REJECT THE PROPOSED INCREASE BASED ON THE COMPELLING CRITERIA AGAINST THE RATE INCREASE AND U S WEST'S FAILURE TO MEET ITS BURDEN OF PROOF.

1. The Commission can comply with the Amended Order of Remand simply by denying the proposed increase, making a determination that the rate should be set at the present level or less, and preparing detailed findings of fact and conclusions of law.

In the Amended Order of Remand dated May 29, 1997, the Honorable Steven L. Zinter reversed the granting of AT&T's motion to deny U S WEST's switched access rate increase and to close the docket on the grounds stated in the Court's oral bench decision. The Court further ordered that the Commission forthwith determine a fair and reasonable switched access rate and render a written decision specifically setting out the rate and prepare a record of its proceedings and findings.

The Court based its decision to remand on: (1) the failure of the Commission to articulate its reason underlying public interest and (2) the failure of the Commission to state its reason for rejecting the evidence presented by Commission staff and U S WEST. Transcript of Oral Argument [and Bench Decision], May 16, 1997 (the "Appeal Transcript"), pp. 76-78. In doing so, Judge Zinter cited Matter of SDDS, Inc., 472 N.W.2d 502, 507 (S.D. 1991), as standing for the proposition that there must be underlying findings in the record to indicate how the ultimate finding was made. Appeal Transcript, pp. 76-77. The Court continued on to state that under SDDS a court "may not search the record and speculate whether these various theories are the ones which support the findings." Id. at 77.

If "substantial evidence to support the agency findings" as required by SDDS had been incorporated into the Commission's decision and if the Commission had determined a fair and reasonable rate, the Court would likely have reached a different result. SDDS, at 507. The Court's objections to the Commission's Findings of Fact, Conclusions of Law, Order and Notice of Entry of Order were procedural in nature. These deficiencies could be corrected merely by preparing a more detailed record for the Court to examine on appeal.

What the Court did not find is significant as well. The Court did not find that the Commission could not base its decision on the public interest, rate shock, or the impact on resellers. As Judge Zinter noted, "I am not deciding today whether or not the public interest is a factor which the Commission may consider as a matter of law." Appeal Transcript, p. 78. The Court continued on to state that arguments were presented by the intervenors as to the public interest and rate shock, but that this evidence was not incorporated into the Commission's findings. Id.

The Commission could address all of the Court's concerns by (1) preparing a more detailed findings of fact and conclusion of law and (2) setting a fair and reasonable rate at the same as or lower than the present rate. An adequate record to support this type of finding already exists. Again, the Commission could comply with the Amended Order of Remanded simply by supplementing its findings and conclusions.

2. The Commission should give limited weight to the results of the cost study and base its decision on other important criteria.

After conducting extensive investigations into this matter, the Commission chose to give little weight to the U S WEST's cost study. The Commission did this not only because the inputs and the model were suspect but also because additional compelling reasons exist for denying the proposed increase. These reasons include the public interest, rate shock, and the impact on resellers. For a second time, the Commission should again give more weight to the other factors it must consider and deny the rate increase.

a. The computer model.

To assist the Commission in determining a fair and reasonable rate, ARSD Chapters 20:10:27 to 20:10:29 establish rules for determination of switched access charges for intrastate switched access services. Pursuant to ARSD 20:10:27:10, companies filing for a change in rates shall either use the computer program established by the Commission or, with authorization from the Commission, may use its own computer program to determine the rate.

The Commission does not have to blindly accept the results of the computer model. The Commission may disregard the results of the computer model. "For good cause shown, the commission may, on its own motion or by application from a carrier's carrier, temporarily waive or suspend any commission rule in chapters 20:10:27 to 20:10:29, inclusive." ARSD 20:10:27:02.

The Commission may give little weight to the results of the computer study for a myriad of reasons. For instance, if the inputs are not reliable or are outdated, then the results also will

not be reliable. Also, if the model itself is suspect, then the results obtained from the model also will be suspect. The model is only a tool, not a substitute for the experience and expertise of the Commission.

Finally, the Commission must consider factors other than the cost study. Even if the computer model and the inputs are in good order (a point which MCI does not concede), the Commission must, by statute, address other criteria. After considering all the pertinent factors, not just the cost study, then the Commission can determine a fair and reasonable rate. In the case at hand, the impact of these other factors greatly outweighs the cost study.

#### B. Fair and reasonable factors

After a hearing concerning the propriety or reasonableness of the rate, the Commission sets a "fair and reasonable" rate. SDCL §49-31-12.4(4). In determining whether the rate is "fair and reasonable," the Commission shall consider:

1. the price of alternative services;
2. the overall market for services;
3. the affordability of the price for the service in the market it is offered;
4. the impact of the price of the service on the commitment to provide affordable universal service; and
5. the fully allocated costs of providing the services.

SDCL §49-31-1.4.

While it must consider these factors in each case, these are not necessarily the only factors that the Commission can consider.

Nothing else in statutes or rules elaborates on what is fair or reasonable; nothing prevents the Commission from utilizing other criteria in determining a fair and reasonable rates. The Commission can exercise wide latitude in determining what criteria constitutes a fair and reasonable rate.

The Commission has articulated other factors that it intends to consider in this case, including the public interest, rate shock, and the quantifiable effect of the cost model on small resellers. Order for and Notice of Procedural Schedule on Continuation of Hearing of January 10, 1997; Findings of Fact, Conclusions of Law, Order and Notice of Entry of Order of January 31, 1997; Prehearing Order on Reopening Record of July 3, 1997.

The concepts of public interest, rate shock, and the effect on small reseller are certainly encompassed within the five categories listed under SDCL §49-31-1.4. In fact, each of these three issues pervade all five factors (the price of alternative services, the overall market for services, the affordability of the price for the service in the market it is offered, the impact of the price of the service on the commitment to provide affordable universal service, and the fully allocated costs of providing the services).

Additionally, case law supports the contention that the public interest is a proper consideration. As stated in Northwestern Bell Telephone Co. v. Chicago and NW Transportation, 245 N.W.2d. 639, 642 (S.D. 1976):

Public service commissions are generally empowered to, and are created with the intention that they should regulate public utilities insofar as the powers and operations of such utilities affect the public interest and welfare.

In asking the Commission to base its decision solely on the cost study, U S WEST ignores the mandate of SDCL §49-31-1.4, the discretion of the commission to consider other criteria, and settled case law. As the next section will demonstrate, U S WEST's failure to address these issues means that it has not satisfied its burden of proof to show that the proposed increase is fair and reasonable.

III. DESPITE NUMEROUS OPPORTUNITIES, U S WEST HAS FAILED TO MEET ITS BURDEN OF PROVING THE RATE INCREASE IS FAIR AND REASONABLE.

SDCL §49-31-12.4(3) explicitly states that "[t]he burden is on the company to prove that the tariff is fair and reasonable." To meet its burden, U S WEST has done little more than comply with the requirements of a cost study under ARSD Chapters 20:10:27 to 20:10:29. U S WEST has not produced evidence on the five factors that statute mandates must be addressed in this case. U S WEST has refused to address additional issues deemed significant by the Commission. Clearly, U S WEST has not met its burden of proof to show the increase is "fair and reasonable."

The company proposing the rate change is not left without guidance on what is "fair and reasonable." SDCL §49-31-1.4 lists the factors that shall be considered by the Commission in determining a "fair and reasonable" rate:

1. the price of alternative services;
2. the overall market for services;
3. the affordability of the price for the service in the market it is offered;

4. the impact of the price of the service on the commitment to provide affordable universal service; and
5. the fully allocated costs of providing the services.

In spite of this articulation of the factors which shall be considered, U S WEST has not presented evidence to address these statutory requirements. Instead, U S WEST relies almost exclusively on the strength of its cost study to demonstrate that the rate is fair and reasonable.

The only support outside the cost study offered for its position that the rates are fair and reasonable is found in the Direct Testimony of Wayne Culp, filed August 27, 1997:

Q: WHY ARE THE COST STUDY OUTPUTS JUST AND REASONABLE?

A: The cost study inputs represent fair and reasonable test period financial and operating results and are consistent with inputs in earlier cost studies. Further, U S WEST has strictly followed the Commission's rules and when compared to other LECs' intrastate switched access costs, U S WEST's costs are reasonable.

Direct Testimony of Wayne Culp, p. 13.

While this testimony makes some reference to the price of alternative services, it does not present specific evidence on the price of alternative services and completely ignores the other four factors required under SDCL §49-31-1.4 (the overall market for services, the affordability of the price for the service in the market it is offered, the impact of the price of the service on the commitment to provide affordable universal service, and the fully allocated costs of providing the services).

Instead of addressing statutorily mandated factors, U S WEST relies on the mistaken proposition that an allegedly properly

conducted cost study yields a fair and reasonable rate. This circular logic ignores the fact that a properly conducted cost study still could yield a result that is not fair and reasonable and that numerous reasons may exist as to why a cost study may be unreliable.

Furthermore, the Commission has stated on multiple occasions that it intends to consider arguments relating to the public interest, rate shock, and the quantifiable effect of the cost model on small resellers. Order for and Notice of Procedural Schedule on Continuation of Hearing of January 10, 1997; Findings of Fact, Conclusions of Law, Order and Notice of Entry of Order of January 31, 1997; Prehearing Order on Reopening Record of July 3, 1997.

As with the statutory requirements of SDCL §49-31-1.4, U S WEST again chooses to rely solely on its cost study and to ignore these pertinent issues. Since U S WEST does not address these issues, the Commission should rely on the evidence of the intervenors that the proposed rate will adversely affect these issues, induce rate shock, and produce an adverse effect on the small resellers.

In summary, the burden lies with U S WEST to prove, not with the intervenors or the Commission to disprove, that the rate increase is fair and reasonable. U S WEST may not have even met its burden of production, much less the burden of proof. All U S WEST offers is its cost study. U S WEST has failed to produce any evidence, much less meet its burden, on a number of key points, including the criteria required under SDCL §49-31-1.4 and the



issues of public interest, rate shock, and quantifiable effect on resellers. The Commission should deny proposed rate increase because U S WEST has failed to meet its burden of proof.

#### IV. THE COMMISSION SHOULD PHASE-IN ANY RATE INCREASE.

If the Commission approves all or part of the rate increase, the Commission should phase-in the rate increase over a number of years because of the magnitude of the increase and because a phase-in is in the public interest.

A phase-in of rates is within the discretion of the Commission. ARSD 20:10:27:20 addresses when a phase-in is appropriate:

Switched access rates for a telecommunications company may be phased-in over a period of time if the commission finds the implementation. . . will result in a significant change in switched access rates or revenues and that a phase-in is in the public interest.

If the Commission grants U S WEST's proposed increase, switched access rates will nearly double. The impact will be felt by consumers, businesses, and resellers. This is a very significant change in switched access rates with a wide-ranging effect on South Dakota. The state would also have the dubious distinction of being one of the top ten nationally for access rates.

The public interest demands that the Commission phase-in any significant increase over a number of years. The administrative rules do not define the phrase "phase-in," but The Random House Dictionary of the English Language defines the term as "to put into use or incorporate gradually or by degrees. . ." MCI requests that

the Commission phase-in any increase in such a manner as will protect consumers, businesses, and resellers.

#### CONCLUSION

U S WEST asks the Commission to ignore the many compelling reasons that exist for denying the proposed rate increase. Further, U S WEST has failed to address the factors which must be considered by the Commission in determining a fair and reasonable rate. All U S WEST has done to justify its proposed rate increase is to plug its own numbers into a computer model. Clearly, U S WEST has not its burden of proof in this matter.

The Commission's decision on the proposed rate increase will greatly affect South Dakota consumers, businesses, and telecommunications companies large and small. The decision will either promote an environment which will yield significant benefits to South Dakota or stifle a telecommunications in the state. For all of the foregoing reasons, MCI urges the Commission to deny the proposed rate increase.

Dated this 5th day of September, 1997.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

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# CERTIFICATE OF SERVICE

Robert K. Sahr of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 5th day of September, 1997, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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Robert C. Riter, Jr.  
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Thomas H. Harmon  
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and by Federal Express Overnight Delivery prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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David A. Gerdes

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ESTABLISHMENT )  
OF SWITCHED ACCESS RATES FOR U S )  
WEST COMMUNICATIONS, INC. )

AMENDED PREHEARING  
ORDER ON  
REOPENING RECORD  
TC96-107

The Circuit Court, the Honorable Steven L. Zinter presiding, reversed and remanded this matter to the Public Utilities Commission (Commission) on May 29, 1997, in accordance with the Court's oral bench decision; the Commission received a transcript of that oral bench decision on June 2, 1997, and the Notice of Entry of Order of Remand dated May 31, 1997, was received by the Commission on June 9, 1997. The Court has reversed the Commission's granting of the motion of AT&T Communications of the Midwest, Inc. (AT&T) to dismiss the action. The Court, upon remanding this matter, has stated that it is restored to a status of being an open docket; the adopted December 9, 1996, Motion of the Commission to reopen the record and take additional evidence on the five factors enumerated in the Motion is yet to be addressed. It will be noted for the record that Commissioner Pam Nelson will be participating in this docket on remand. The Commission having considered the directions of the Court hereby enters the following Prehearing Order

1. The Commission rejects the analyses of staff witnesses Rislov, Best and Knadle which was presented at the hearing in this matter on October 9 and 10, 1996, and in their prefiled testimony. These analyses are rejected because the responses to data requests upon which the analyses were based were not obtained under oath. Further, all figures supplied to staff by U S WEST Communications, Inc. (U S WEST) or which were used as inputs into U S WEST's cost study were not independently verified by staff as to their accuracy or validity for use as inputs to the cost study. As such these witnesses' analyses, upon reopening the record, shall be given no evidentiary weight. Staff shall submit a new analysis of this case, subject to the directives of this Order.

2. In light of the foregoing deficiencies in staff's analyses, the Commission is Ordering staff to conduct an on-site investigation which shall consist of a review in this docket to verify numbers used by U S WEST as inputs to its cost study and to determine the accuracy of those numbers used by U S WEST and the validity of their use in the cost study and to prepare a report to be filed with staff's prefiled testimony with this Commission for consideration at the reopened hearing in this matter. Staff shall, at a minimum, provide the following information to the Commission as a result of this investigation

a. a review of inputs which staff deems significant and which are required by Commission rules for cost studies, which were used by U S WEST in its cost study. The purpose of such review shall be to determine the accuracy of the inputs for use under the Commission's rules on cost studies; and

b. provide evidence that this review consists of no less than reviewing a sampling of U S WEST's records which would be compiled by U S WEST in the formulation of its inputs to its cost study; and

c. an analysis of differences, if any, which may be found in the data used by U S WEST in the formulation of its inputs actually used and what staff deems appropriate under the Commission's rules for cost studies; and

d. reviews performed on U S WEST's inputs shall not be exclusively based upon secondary sources such as ARMIS reports; and

e. all responses to staff's data requests shall be under oath and filed with the Commission for inclusion in the docket; and

f. an analysis of how consumers' interests are affected by any proposed switched access increase.

At the Prehearing Conference, staff has requested the assistance of accountants or other consultants in performing this work. The Commission acknowledges this request and will consider approving contracts for such assistance. Staff shall present such contracts to the Commission for consideration at a public meeting of the Commission, the scheduling of which shall be done through the Executive Director for the Commission.

Parties have requested the right to participate in any on-site reviews performed by or on behalf of Commission Staff. The Commission does not have a position on this request and this is not to be construed as an order or ruling by the Commission as such activity may involve confidentiality claims upon which the Commission may later be called upon to rule. The parties may wish to coordinate their efforts with Commission Staff and U S WEST

3. The Commission gives U S WEST the opportunity to present additional evidence with regard to the cost study at the reopened hearing in this matter. Any additional numerical evidence submitted by U S WEST shall, at a minimum, include foundational evidence from its employees or consultants who actually compile or otherwise assemble the information contained in the cost study as opposed to those employees who act only in a supervisory capacity. All such evidence shall further be verified by U S WEST as to its accuracy and validity for use in the cost study.

4. Intervenor, consistent with the Commission's adopted Motion of December 9, 1996, shall be given the opportunity to present additional evidence relative to two aspects of this docket: (1) the cost study filed by U S WEST including the application of prescribed depreciation in it and any audits or reviews done by intervenors; and (2) the public interest as it is affected by the access charge proposed by U S WEST including such aspects as quantification of the effect of the access charge and the effect of rate shock.

5. In conducting the hearing in this reopened record, the Commission will sparingly permit the use of late filed exhibits under its rule ARSD 20:10.01:24.03. Parties are expected to come to the hearing prepared to present their case. The Commission will consider excluding from admission evidence which is irrelevant, incompetent, immaterial or unduly repetitious.

6. The schedule for deadlines in this matter shall be as follows:

Simultaneous Prefiled testimony: August 27, 1997

Simultaneous Prefiled Rebuttal testimony: September 3, 1997

Hearing: September 10 through 12, 1997, Room LCR1, State Capitol Building,  
Pierre, South Dakota, commencing at 9:00 a.m., on September 10, 1997.

Parties wishing to file any Motions for the hearing shall do so at least five days prior to the hearing. Motions and supporting authority, combined, shall not exceed ten pages in length.

Because of the Court's directive that this matter be handled forthwith, parties are encouraged to file prehearing briefs instead of post hearing briefs to assist the Commission in ruling in a timely manner.

Dated at Pierre, South Dakota, this 8th day of September, 1997

<p align="center"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>Signed: <u>William Bullard, Jr.</u></p> <p>Date: <u>9/8/97</u></p> <p align="center">(OFFICIAL SEAL)</p>
---

BY ORDER OF THE COMMISSION:  
Commissioners Burg, Nelson and  
Schoenfelder

William Bullard, Jr.  
WILLIAM BULLARD, JR.  
Executive Director

## EXHIBIT DOCUMENT

TC96-107

Date	Exhibit Number	Document Description	Witness	Offered	Admitted	Denied
8/27/97	30	Prefiled (U S WEST)	Culp	✓	Subject to objection - question ✓	
9/27/97	31	Prefiled (U S WEST)	Kramer	✓	✓	
8/27/97	32	Prefiled (U S WEST)	Hayek	✓	✓	
8/27/97	33	Prefiled (TAG)	Simmons	✓	✓	
9/27/97	34	Prefiled (TAG)	Thurman	✓	✓	
8/27/97	35	Prefiled (TAG)	Noonan	✓	✓	
8/27/97	36	Prefiled (TAG)	Susskind	✓	✓	
8/27/97	37	Prefiled (Staff)	Rislov	✓	✓	
8/27/97	38	Prefiled (Staff)	Best	✓	✓	
8/27/97	39	Prefiled (Staff)	Knadle	✓	Subject to objection - question ✓	
9/3/97	40	Rebuttal (U S WEST)	Culp	✓	✓	
9/3/97	41	Rebuttal (U S WEST)	Wilcox	✓	✓	
9/3/97	42	Rebuttal (TAG)	Simmons	✓	✓	
9/3/97	43	Rebuttal (TAG)	Thurman	✓	✓	
9/3/97	44	Rebuttal (TAG)	Susskind	✓	✓	
9/4/97	45	Errata Page for Rebuttal (Susskind)	Susskind	✓	✓	
7/21/97	46	Computer Printouts		✓ Hedley	✓	
7/18/97	47	DR 1 - 01		152		
7/24/97	48	DR 1 - 02				
7/18/97	49	DR 1 - 03		✓		
7/18/97	50	DR 1 - 04				

Admitted  
Excluded



## EXHIBIT DOCUMENT

TC96-107

Time	Exhibit Number	Document Description	Witness	Offered	Admitted	Denied
8/27/97	30	Prefiled (U S WEST)	Culp	✓	<i>Subj. to the rules</i> ✓	
8/27/97	31	Prefiled (U S WEST)	Kramer	✓	✓	
8/27/97	32	Prefiled (U S WEST)	Hayek	✓	✓	
8/27/97	33	Prefiled (TAG)	Simmons	✓	✓	
8/27/97	34	Prefiled (TAG)	Thurman	✓	✓	
8/27/97	35	Prefiled (TAG)	Noonan	✓	✓	
8/27/97	36	Prefiled (TAG)	Susskind	✓	✓	
8/27/97	37	Prefiled (Staff)	Rislov	✓	✓	
8/27/97	38	Prefiled (Staff)	Best	✓	✓	
8/27/97	39	Prefiled (Staff)	Knadle	✓	<i>Subj. to the rules</i> ✓	
9/3/97	40	Rebuttal (U S WEST)	Culp	✓	✓	
9/3/97	41	Rebuttal (U S WEST)	Wilcox	✓	✓	
9/3/97	42	Rebuttal (TAG)	Simmons	✓	✓	
9/3/97	43	Rebuttal (TAG)	Thurman	✓	✓	
9/3/97	44	Rebuttal (TAG)	Susskind	✓	✓	
9/4/97	45	Errata Page for Rebuttal (Susskind)	Susskind	✓	✓	
7/21/97	46	Computer Printouts		<i>Handwritten</i> ✓	✓	
7/18/97	* 47	DR 1 - 01		192		
7/24/97	48	DR 1 - 02				
7/18/97	49	DR 1 - 03		✓		
7/18/97	50	DR 1 - 04				

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7/18/97	53	DR 1 - 07			
7/22/97	54	DR 1 - 08			
7/19/97	55	DR 1 - 09			
7/18/97	56	DR 1 - 10			
7/18/97	57	DR 1 - 11			
7/18/97	58	DR 1 - 12			
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7/30/97	74	DR 3 - 02			
7/31/97	75	DR 3 - 03			
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8/26/97	150	DR 8 - 13				
8/19/97	151	DR 8 - 14				
8/19/97	152	DR 8 - 15				
9/10/97	153	reassignment - assignment	by Commission	✓	✓	
"	154	list of other deaths			offer of red water	
"	155	Best info. file	was sent as a result of letter			
"	155	sublist 96-032	APR 1995	✓	✓	
9/11/97	156	letter to Nider		✓	✓	✓
"	157	prep charts - 3 pages	revised	✓	✓	
"	158	two graphs 4 p.	Submitted	✓	✓	
"	159					
"	160	offer of P, red	Wider	✓		✓
"	161	1 sheet	Culp - standard	✓	✓	
"	162	March, April 1995	Bureau/Culp	✓	✓	
"	163	FIU - 1 hour	W. P. 1	✓	✓	
"	164	copy of 91-0787	W. P. 1	✓		✓
"	165	let. L. Red - FIU	W. P. 1		✓	
"	166	" - 1/19/97	W. P. 1		✓	
"	167	1/19/97	W. P. 1	✓	✓	



1 THE PUBLIC UTILITIES COMMISSION  
2 OF THE STATE OF SOUTH DAKOTA

3 RECEIVED

4 SEP 11 1997

5 S.D. PUBLIC UTILITIES COMMISSION

6 IN THE MATTER OF THE ESTABLISHMENT  
7 OF SWITCHED ACCESS RATES FOR  
8 U S WEST COMMUNICATIONS, INC.

9 TC96-107

10 Volume I

11 Pages 1-160

12 HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

13 PROCEEDINGS:

September 10 & 11, 1997  
Room LCR #1, Capitol Building  
Pierre, South Dakota

14 PUC COMMISSION:

Jim Burg, Chairman  
Laska Schoenfelder, Commissioner  
Pam Nelson, Commissioner

15 COMMISSION STAFF

16 PRESENT:

17 Camron Hoseck  
18 Karen Cremer  
19 Harlan Best  
20 Gregory A. Rislov  
21 Bob Knadle  
22 Dave Jacobson  
23 Charlie Bolle

24  
25 Reported by: Lori J. Grode, RMR

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## P R O C E E D I N G S

CHAIRMAN BURG: I will open the meeting.

We'll begin the hearing of Docket TC96-107, in the Matter of the Establishment of Switched Access Rates for U S West Communications, Incorporated.

I guess I forgot the time is 9:00 a.m. The date is September 10, 1996; and the location of the hearing room is LCR-1 in the State Capitol Building in Pierre, South Dakota.

I'm Jim Burg, Commission Chairman. Commissioners Nelson and Schoenfelder are also present. I am presiding over this hearing.

This hearing was noticed pursuant to orders issued as a result of a prehearing conference. These

orders were issued on July 3rd, 1997, and September 8th, 1997. This proceeding is a reopening of the record in this docket as first ordered on December 19th, 1996, pursuant to an Amended Order of Remand from the Circuit Court on May 29, 1997.

Camron Hoseck will act as Commission counsel. He may provide recommended rulings on procedural and evidentiary matters. The Commission may overrule its counsel's preliminary rulings throughout the hearing. If not overruled, the preliminary rulings will become final rulings.

The issue at this hearing is whether U S West's application to increase its carrier common line access charge to interconnect and local switching rates shall be granted.

All parties have the right to be present and to be represented by an attorney. All persons so testifying will be sworn in and subjected to cross-examination by the parties. The Commission's final decision may be appealed by the parties to the State Circuit Court and the State Supreme Court.

I'm going to turn it over to Camron Hoseck for the remainder of conducting the hearing. Camron.

MR. HOSECK: At this time I'll take the appearances of the parties. U S West.

7  
Make any preliminarily motions?

CHAIRMAN BURG: I have a motion. The Amended Order of Remand in this docket incorporates by reference the oral bench decision and otherwise makes reference to the record in this matter. I move that the transcript of the proceedings in this case heard before Judge Zinter on May 16, 1997, be included in the administrative record in this matter and marked as an exhibit.

COMMISSIONER SCHOENFELDER: I'll second the motion.

COMMISSIONER NELSON: I concur.

MR. HOSECK: That will be Exhibit 153.

MR. HOSECK: In these proceedings there was an objection filed to the Pretrial Order by U S West. As a point of clarification, does U S West consider that to be a motion in any form?

MR. HEASTON: No. It's an objection, and we it's an objection, and we wish to renew the objection for the record.

MR. HOSECK: It will be noted. Do any of the parties wish to make opening statements?

MR. HEASTON: Well, when will we have a ruling on the objection? I guess that's the question I have.

MR. HOSECK: The objection is it's noted in the record. The ruling is that it's just noted in the record.

MR. HEASTON: So the Commission isn't going to either approve or deny it?

MR. HOSECK: Well, since it was a Pretrial Order, I would recommend that it be denied.

MR. HEASTON: Because it was pretrial?

MR. HOSECK: Well, we are here at the hearing right now and it was a Pretrial Order. And the objection, as I understood it, was to the pretrial proceedings; and at this point in time it seems to be moot, but it's noted in the record. And if you want a ruling on it, I would recommend that your objection be denied.

MR. HEASTON: I would want a ruling on it because I don't think it's a pretrial procedure. It's a substantive objection to the Commission disregarding all the testimony that was provided in the initial hearing. And I believe it's wholly improper, and I think there needs to be a ruling on it.

MR. HOSECK: The ruling is the objection is denied.

Are there any opening statements that anyone wanted to make?

MR. HEASTON: None by U S West.

MR. HOSECK: The order of the proceedings today shall be that U S West be given the opportunity to present its case first. Staff would be second and intervenors third. At this time U S West may proceed with its case.

MR. HEASTON: U S West would call Wayne Culp.

WAYNE CULP,

called as a witness, being first duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HEASTON:

Q. Mr. Culp, would you please for the record state your name.

A. My name is Wayne Culp.

Q. And by whom are you employed?

A. I'm employed by U S West Communications.

Q. And what is your job with U S West Communications?

A. I'm the Director of Finance, and specifically I handle finance matters for the state of South Dakota.

Q. With regard to this hearing, what were your responsibilities?

A. Regards this hearing, I was responsible for



1 the team that developed the switched access code. That  
2 follows the Commission's rules.

3 Q. To your immediate right is what has been  
4 marked as Exhibit No. 30. Do you have that?

5 A. Yes, I do.

6 Q. Can you identify that?

7 A. Yes. That's the prefiled direct testimony of  
8 mine that was filed on August 27th, 1997.

9 Q. Does that include Schedules 1 through 5?

10 A. Schedules 1 through 3, I believe. I don't  
11 know where five is coming from.

12 Q. Wait a minute, I'm in the wrong pew here.  
13 Schedules 1 through 3.

14 A. Yes, it includes Schedules 1 through 3.

15 Q. And do you have any additions or corrections  
16 to make to that testimony?

17 A. None.

18 Q. If I were to ask you the questions contained  
19 in that prefiled testimony today, would your answers be  
20 the same?

21 A. Yes.

22 MR. HEASTON: I would move the admission of  
23 Exhibit No. 30.

24 MR. HOSECK: Are there any objections?

25 MR. LOVALD: If it please the Commission, I

1 would like to raise a procedural question at this  
2 point. There are two pieces of testimony taken from  
3 the 91-040 docket that have been attached to Mr. Culp's  
4 testimony. I think an objection as to hearsay and  
5 possibly foundation could be made to this testimony.

6 My personal preference as we go through these  
7 hearings is that any party -- or the Commission should  
8 be allowed to go back into that docket and take any  
9 document or any testimony that has any relevance to the  
10 issues in this proceeding. What I don't want to have  
11 happen -- because I think later in the hearing I'm  
12 going to ask that the Commission consider a couple of  
13 documents coming out of the 91-040 docket -- is to have  
14 this testimony in and then have objections raised later  
15 on by U S West when we attempt to ask the Commission to  
16 consider other documents.

17 So if we can have an agreement that anything  
18 out of 91-040 can be considered by the Commission, I  
19 don't object foundationally or hearsaywise to  
20 attachments to the Culp testimony. Otherwise, I would  
21 object.

22 MR. HEASTON: I guess my position on that for  
23 U S West is that matters which are in that docket can  
24 be officially noticed by this Commission, if nothing  
25 else, because they are a record of the official

proceedings in that docket. And AT&T was an intervenor and participant party in that docket, so I'm not sure why the objection.

MR. LOVALD: If that's the U S West position, then I withdraw my objection.

MR. HOSECK: We'll be taking a short recess for about five minutes.

(AT THIS TIME A SHORT RECESS WAS TAKEN.)

MR. HOSECK: We'll go back on the record.

COMMISSIONER SCHOENFELDER: Mr. Hearing Officer, I have a motion as to regards that Mr. Lovald is speaking to that issue. May I make that motion now?

MR. HOSECK: Certainly.

COMMISSIONER SCHOENFELDER: Okay. I would move that the following testimony or other evidence submitted by Witness Wayne Culp be stricken from the record and not considered by the Commission in that matter as irrelevant:

On page six of the prefiled testimony, beginning on line 15, with the word "this" through line 20. On line 15, beginning with the word "this" through line 20. I'll do this slowly. Have you found that? Is everyone ready? On page 12 of the prefiled testimony, beginning on line 22 with the word "in"

through line 25, ending with the figures C&A And on  
line 26, the sentence beginning with Sheet A. and  
ending on page 13, line 1, with the number three And  
on page 13 of the prefiled testimony the paragraph  
starting on line 21, which continues to page 14 through  
line 10. Schedules one, two, and three, which are  
attached to the prefiled testimony of Mr. Culp.

Mr. Hearing Officer, I'd move that these  
witness have these things struck from the record

MR. HOSECK: Any response from any parties?

MR. HEASTON: Well, I guess this is a pretty  
amazing to U S West. We don't understand where the  
Commissioner is coming from. It would seem to us the  
Commissioner has already read the testimony, has  
already made a decision in this case; it's  
predetermined what the record is going to be. And we  
know no basis for the objection. She stated no basis  
for the objection. Therefore, we think it's irrelevant  
and out of line and could very well indicate a bias in  
this case that is developed at this point. So we don't  
object to it.

MR. HOSECK: Anyone else?

COMMISSIONER NELSON: I second it.

COMMISSIONER SCHOENFELDER: Can I elaborate a  
little bit on my reasoning?

MR. HOSECK: Certainly.

COMMISSIONER SCHOENFELDER: The

Administrative Rules of the Commission which govern cost studies speak for themselves. The costing recommendations in other dockets do not concatenate inputs into the cost model in this docket. Access rates for LECA are determined upon LECA's members' inputs to the cost model which are unique or different from those of U S West. And schedules one, two, and three are matters referred to in the stricken testimony. The last three are ones that the witness testimony refers to in those instances. And that's my reasoning, Mr. Hearing Officer.

CHAIRMAN BURG: I'll concur in that motion.

MR. HOSECK: Those matters will be stricken from the record.

MR. HEASTON: I'm not sure what was struck here. Is the current cost study that's on file with the Commission in this docket still in evidence?

MR. HOSECK: The matters that were stricken were the matters that the Commissioner referred to in her motion.

MR. HEASTON: I understand that, Mr. Hearing Officer. I'm asking for clarification whether or not the cost study that is currently on file for this

booklet using the '95 test year is still in evidence in front of this Commission.

MR. HOSECK: The cost study was not stricken.

BY MR. HEASTON:

Q. Mr. Culp, were you able to follow the Commission's motion?

A. Yes.

Q. And as to what was stricken?

A. Yes. I didn't mark it down.

Q. Do you think you can summarize what's left of your testimony?

A. Yes. Actually, I didn't have any of that on my summary.

Q. Okay. If you would, please summarize your testimony.

A. My summary is very short. The company is here today to defend its cost study again. It's the same cost study that was presented last year and that was filed in June, and I believe the hearing was in October 1996. Since the remand the company has spent a significant amount of time verifying the numbers. The staff made several visits and many data requests, and through that process we also verified the inputs.

There are two witnesses here today that work

under my supervision on the team, and they were very involved in the answering of data requests of the staff. And there are other U S West representatives here that also were involved in those responses. And I believe we cooperated fully with the staff in their investigation. I still contend that our cost study of 4.15 cents follows the South Dakota rules and think that's a basis for setting the rates. That concludes my summary.

MR. HEASTON: I have no further questions.  
Culp is available for cross-examination.

MR. HOSECK: Staff, do you have any cross-examination?

CROSS-EXAMINATION

BY MR. CREMER:

Q. Good morning, Mr. Culp.

A. Good morning.

Q. Would you explain for us what the Uniform System of Accounts is?

A. The Uniform System of Accounts? I presume you're referring to the FCC Part 32. And it's the system of accounts that the FCC has established for telephone companies to follow. This Commission -- I don't remember what rule it is. But this Commission has adopted that as the basis of following the system

of accounts that telephone companies should follow.

Q. And you said that's required to be maintained by the FCC?

A. The FCC requires us to maintain our ledger based upon the system of accounts that they define, and we do it that way. And I believe all of the states that we operate in that follow that same system have in one way or another affirmed that, and so we have one ledger. We have one system of accounts.

Q. Okay. Are other reports based on these Part 11 numbers?

A. Well, the reports are based upon on the company ledger, which uses the Uniform System of Accounts.

Q. And does Administrative Rule 20:10:27:04 require that the Uniform System of Accounts be followed for switched access?

A. I didn't bring a copy of the Administrative Rules up here. Can you give me the last number again, please?

Q. 04.

A. Yes, it does.

Q. Could you tell us how Part -- how does Part 11 get to South Dakota for its books?

A. I don't know the answer. I mean it's the way



you asked the question.

Q Let me say -- I think I may have put some of that backwards.

A Part 32 is the FCC rules and regulations, and like we have rules and regulations for South Dakota.

Q Okay.

A The ledger -- there's one ledger for the company, and it contains all the transactions throughout U S West Communications. And within that ledger is specific account codes for South Dakota. So it would be a specific subsection of the ledger that would be South Dakota specific. When we prepare the reports for South Dakota, we pull that section, those transactions from the ledger, and that generates the reports.

Q How do corporate expenses get assigned or allocated to South Dakota?

A Well, corporate expenses, generally speaking, some is directly assigned. Larry Toll, vice-president for South Dakota, his time is directly charged to South Dakota, as would Jon Lehner and other people working in that group. But as far as the people in Denver that do corporate expenses, those expenses would be prorated to South Dakota.

Q. Could you tell us what Part 64 is?

A. Part 64 came out of the FCC's Part X  
deregulation. And I don't recall the docket numbers, but it  
identifies deregulated products. And it's the  
safeguard rules that the FCC put together for  
deregulated products, and it's the methods of how that  
is to be separated from when determining reports for  
rate making.

Q. I'm going to step back for a minute. When we  
were talking about corporate expenses and you said they  
were prorated to South Dakota, how were those  
prorated? What basis is used?

A. I'd have to pull out the Jurisdictional  
Allocations Manual specifically expense by expense how  
it's done. Generally speaking, South Dakota is a  
little bit less than a two percent state, so you'll see  
the allocations factors being something a little bit  
less than two percent, but it would be specific for the  
different accounts.

Q. Is Part 64 required by some regulatory body?

A. By some regulatory body?

Q. Is it required to be kept?

A. Well, the FCC requires us to use Part 64.

Q. And does the FCC require Part 64 removal  
prior to determining numbers subject to separations?

A. Yes, it does.

Q. What is meant by numbers subject to separations?

A. In the FCC process of determination what is interstate and intrastate, what the FCC is doing is they're determining what is interstate. And before you can determine what is interstate, the FCC requires us to subtract from our total numbers the amount that's deregulated, and then you -- then the FCC requires us to use the Part 36 rules, or the separations rules, to determine what is interstate. And that's what the FCC does. But what the states do is they take what is left after that and that becomes intrastate.

Q. And you said Part 36, that's also required by the FCC?

A. Yes, yes.

Q. Is Part 36 the same as ARSD 20:10:20?

A. Pretty close, I believe.

Q. Okay.

A. There's a few exceptions, but pretty close.

Q. Could you tell us what Part 69 is?

A. Part 69 are the FCC rules for determining access charges and taking them down to the individual elements.

Q. And is that the same as ARSD 20:10:29?

A. Pretty close, almost the same thing, I believe, almost word for word.

Q. Does Part 69 assign part of the CCL revenue requirement to a subscriber line charge?

A. No. Let me explain that --

Q. Okay.

A. -- if I may. What Part 69 does, and actually you could see it in the Commission's model here too, is it identifies common line, not carrier common line. It identifies common line. And the common line represents the cost of the loop. And then it assigns the common line, it discerns the common line based upon a 25 percent allocator in the arena. What the interstate does, it has two charges to cover that.

The first is sometimes referred to as a subscriber line charge. You're actually reading in Part 69 is called end user common line charge. And then the carrier common line charge becomes the residual after the local charge that -- the revenues from the local charge is removed from the common line charge. So it's common line and then it comes down from the end user common line and the carrier common line.

Q. And you said ARSD and I don't think you said ARSD one, but would 20:10:29 allow for a similar type

Q. assignment?

A. Would it allow for it?

Q. Right. Or does it?

A. To allow for a subscriber line charge? I

mean that's what the FCC does.

Q. I guess I meant does it have the CCL?

A. I believe what 29 does in the state is it assigns all of that, all of the common line cost, to the carriers.

Q. Okay. And can you tell us what is Part 65?

A. Part 65? Isn't that the rule-making requirements of the FCC and tells you how to develop a rate of return and how to file your filings with the FCC? I haven't looked at that in a long time. I don't do federal filings.

Q. Would you know is there a similar administrative rule in South Dakota, if you know?

A. Well, Chapter 27 does some of that stuff, and there's probably some other rules, yes.

Q. Okay. Could you explain how the separations information system works?

A. No, I can't. But a witness, Deborah Hayek can.

Q. Can you explain the reason for removing the payphone costs from the cost study?

A Yes. The FCC, following the Telecommunications Act of 1996, issued its payphone deregulation orders. I believe there's three orders. And as they did this, they came up with the interim compensation to payphone providers. And U S West and all the RBOC's are payphone providers along with other private providers. And what the FCC did was they said, well, payphones are included in Part 36. Payphones are assigned to the common line rate element. And the FCC recognized that. And the FCC required the RBOC's to reduce their carrier common line rate by the amount of those payphone costs that were included in those Part 36 analyses.

And the FCC also said that if rates were set in the same similar way in the states, that the states should do a similar thing. Well, in three of U S West's states, and South Dakota being one of them, we set access rates based upon those set the 36, Part 36 rates. So when we implemented the rate, we did not include those costs because we agree that if you were strictly following the Commission's rules, you would have been including those costs in common line rate.

Q. What switched access rate is U S West currently charging?

A. I don't know the exact number. Our rebuttal

response is our pricing witness, Dr. Wilcox, and she would answer that question for you. It's 6.35 minus whatever the payphone was, and I'm not sure exactly what that is.

Q. Okay. And is it my understanding that you are requesting that it go to 6.4?

A. Yeah, yes.

Q. Okay. Could I have you turn to page seven, page 16, of your direct -- well, let's call it Exhibit 90

A. I'm on page seven. Excuse me, which line?

Q. 16.

A. Okay.

Q. And basically to summarize you, you state that you verified the inputs. And my question is how did you do that, or what did you do?

A. It's done several ways, and it's done by several different people. But specifically what I did is when the inputs are put together -- and, again, this was a year ago and it was again this year -- is I go to the ledger, or to the ledger reports, and I make sure that the expenses and the investment I see in the ledger reports are the numbers that are coming into the model. And that's what I do for the verification.

Q. And then on line 17 you talk about you

analyze the inputs and outputs for reasonableness. And, again, I would ask how did you do that, or what was it compared to?

A. Well, I look at past studies. And I would also look at the current ledger as to what it looks like in prior ledgers. And I shouldn't say ledger. I don't look at the whole ledger. I look at the ledger reports.

Q. If you would look at what's been marked as Exhibit 44 -- no, wait a minute, 36, and that's Sussekind. It's marked for identification, and I know it hasn't been put in yet, but I want you to look at a page in there.

A. I have it.

Q. Okay. If you look at page three, lines 10 to 16.

A. Yes.

Q. And he talks about he calculated a percentage. Has U S West calculated a similar type of percentage if U S West's originating assets were added?

A. I haven't. The minutes come from Dr. Wilcox. She does the minutes. I do the cost side. I get to the revenue requirement side, and then use the numbers from there.



1 Q. I'll ask her that series of questions.  
2 There's been some discussion regarding the impact on  
3 the smaller resellers. Would you have any idea how  
4 -- well, I'll ask Dr. Wilcox that too. I'm sorry.  
5 Did AT&T submit my data requests in this phase of the  
6 hearing, or any phase?

7 A. Well, they submitted data requests about  
8 year. There have been none since the case was  
9 remanded.

10 Q. And since the remand has MCI submitted any  
11 data requests?

12 A. No, they have not.

13 Q. Has the TAG Group?

14 A. No, they have not.

15 Q. Has Sprint?

16 A. No, they have not.

17 Q. Has Dakota?

18 A. No, they have not.

19 Q. Okay. Looking at your rebuttal testimony on  
20 page three.

21 MR. HEASTON: I was going to do that in  
22 rebuttal phase.

23 MS. CREMER: I'll wait until then. If I can  
24 have a minute. I haven't any further questions.

25 MR. HOSECK: Any cross by Sprint?

MR. LOW: No questions.

MR. HOSECK: MCI?

CROSS-EXAMINATION

BY MR. GERDES:

Q. Good morning, Mr. Culp.

A. Good morning, Mr. Gerdes.

Q. You agree that the obligation of the Commission in this proceeding is to determine a fair and reasonable rate?

A. Yes.

Q. Is it your position that the switched ~~model~~ model that you have testified to here today in and of itself produces a fair and reasonable rate?

A. Yes, it does.

Q. Does it consider the price of alternative services?

A. It just follows the rules of the --

Q. No, my question is does it consider the price of alternative services?

A. No, it doesn't.

Q. Does it consider the overall market for services?

A. No, it doesn't.

Q. Does it consider the affordability of the price of the service in the market it is offered?

1 A. No, it doesn't.

2 Q. Does it consider the impact of the price of  
3 the service on the commitment to provide affordable  
4 universal service?

5 A. No, the model does not do that.

6 Q. Thank you. Does your cost model establish a  
7 floor or a ceiling for prices?

8 A. It establishes a price and a ceiling.

9 Q. So you're saying that it establishes the  
10 ceiling for the price for services?

11 A. That's my answer.

12 Q. Thank you.

13 MR. GERDES: That's all I have. Thank you.

14 MR. HOSECK: AT&T?

15 CROSS-EXAMINATION

16 BY MR. LOVALD:

17 Q. Mr. Culp, I'm a little bit confused by your  
18 testimony on the payphone investment. I understood  
19 from reading page 13 of your testimony that the  
20 payphone investment is in the file cost study. Is that  
21 correct?

22 A. We're looking at the question on line four.

23 Q. Yes.

24 A. Specifically when I answered this question,  
25 the cost study follows the Commission rules. I have

1 priced out the value of the payphones. I have not  
2 presented that in evidence. And I have followed the  
3 Commission rules of what I have done. The Commission  
4 rules do not follow the payphone order from the FCC

5 Q. No, I understand that. But I think it's clear  
6 -- I got the impression from Ms. Greiner's questions and  
7 your response that somebody at U S West had removed  
8 payphone investment from the cost of switched access.

9 A. Not in this study they haven't.

10 Q. The study is what's before the Commission.  
11 correct?

12 A. That's correct.

13 Q. And the study produced the rate that you're  
14 currently charging?

15 A. I believe that the rate we're currently  
16 charging is that study less the effect of payphones.

17 Q. The FCC Order that ordered local exchange  
18 companies such as U S West to remove the payphone  
19 investment from their switched access tariffs. That's  
20 known and measurable, is it not?

21 A. Yes, it's known and measurable

22 Q. Would it have been any more difficult for U S  
23 West to make the adjustment and file the adjustment  
24 with the Commission on payphone investment than it was  
25 for U S West to add prescribed depreciation into the

1 rate?

2 A. Represcribed depreciation follows the rules.  
3 the payphone adjustment does not.

4 Q. Payphone adjustment was per an FCC Order, is  
5 that correct?

6 A. Yes.

7 Q. Mr. Culp, I think there are a couple places  
8 in your testimony that you speak of price imputation.

9 A. Can you point to where I speak price  
10 imputation?

11 Q. I believe it's in your rebuttal, and maybe  
12 that isn't before the Commission yet. Let me ask you  
13 this: If U S West is granted a switched access rate of  
14 6.4 percent on both originating and terminating, is it  
15 your understanding that when U S West is pricing its  
16 retail intrastate long distance that it has to subtract  
17 the price back into its own rates and establish a price  
18 for it?

19 A. I am not a pricing witness. I am a cost  
20 witness. I'm here to establish cost based upon the  
21 South Dakota rules.

22 Q. Is there anybody with U S West that will be  
23 presenting testimony in this hearing that can answer a  
24 question along that line?

25 A. There are. There are many U S West people.

MR. HEASTON: I'll answer that question. The answer is no. And the reason is because imputation is a toll pricing issue, not a switched access pricing issue.

Q. Mr. Culp, are you familiar with a tariff that has been docketed by the Commission and is pending before the Commission in Docket TC97-143?

A. I don't know what this represents.

Q. Have you heard of a promotional offering by U S West that has been filed in South Dakota and other states that where the company desires to offer a flat rated monthly fee to its customers for unlimited interLATA long distance dialing?

MR. HEASTON: I'll object to that question. That is a toll offering, not a switched access offering.

MR. HOSECK: Sustained.

Q. Mr. Culp, you agree that AT&T, MCI, Sprint, and TAC members are all customers of U S West on switched access services, aren't they?

A. Yes, I agree.

Q. You recollect that I believe U S West in Docket TC94-121 entered a stipulation with Commission staff?

A. Yes.

Q. And I believe that stipulation was entered into evidence in the original hearings in this matter is that your recollection?

A. Yeah, I'll agree with that.

Q. Would you also agree that the Commission entered an order approving that stipulation and also approving the U S West price regulation plan?

A. In 94-121? Yes.

Q. Correct. Would you agree with me that the Commission finding Number 12 determined that as to represeted depreciation, that that item was going to be expensed with no substantial reimbursement by U S West customers?

A. Finding 12?

Q. Yes.

A. Can I have a copy of that?

MR. HEASTON: Is this an order that he's looking at?

A. Yeah.

MR. HEASTON: In what docket?

A. 94-121.

Q. I think it's either Exhibit 14 or 15 in the original docket.

A. The finding of fact says a significant portion of the increased capital recovery

1 (depreciation) will be expensed with no corresponding  
2 reimbursement by U S West customers.

3 Q. Now, you'd agree with me, Mr. Culp, that the  
4 current cost study on file before this Commission  
5 includes an adjustment that brought in the represeted  
6 depreciation lives?

7 A. Yes.

8 Q. And I believe Staff Witness Knadle actually  
9 quantified how much of the switched access cost is  
10 accounted for by the represeted lives. Is that  
11 correct?

12 A. That's correct.

13 Q. Would you agree with his numbers?

14 A. Well, actually last year I came up with about  
15 the same number, and I think it's on the record.

16 Q. You would agree with me that there is an  
17 element of increased cost in that switched access rate  
18 as a result of the represeted lives, is that correct?

19 A. That the represeted lives -- the  
20 represeted lives increased the depreciation cost in  
21 those costs and the cost study.

22 Q. And the rate that you're currently charging?

23 A. Yes.

24 Q. And they are being passed on to your  
25 customers such as AT&T, MCI, Sprint, and the TAG



members; is that correct?

A. That those costs are -- that those costs are part of the price.

Q. In connection with Mr. Gerdes's questions, would you agree with me that as we speak, U S West is under a price regulation plan?

A. I agree with that.

Q. And, to your knowledge, are any other local exchange companies within the state of South Dakota under price regulation?

A. I don't believe so.

Q. Would you agree with me that the switched access cost model of the South Dakota Commission uses classic rate of return basically? Yeah, rate of return regulation principles in terms of determining the cost?

A. Very definitely.

Q. Would you agree with me generally that under SDCL 49-31-1.4 that the legislature has stated that a price-regulated company's prices are determined by methods other than rate of return regulation?

A. I'm way beyond my bounds here. I don't have it in front of me. I don't study that statute. And I mean I could read it, give you my opinion as a cost accountant, but I'd have to do that.

Q. In your testimony on page 13, I think you

concluded that the new cost determined by U S West and being charged by U S West is fair and reasonable. Would you agree with me that the only two justifications that you gave were that, number one, the cost model was used; and, number two, the rate when compared to other smaller LEC's is lower?

A. Well, the second one was stricken by the Commission.

Q. But so basically --

A. So the first one is based upon the cost model. Yes.

Q. And that would be the basis for your conclusion today in terms of the fact that it's fair and reasonable?

A. From a cost accountant perspective, yes.

Q. Would you agree with me generally -- well, strike that. I'm going to start again. You were present during Docket 91-040, weren't you?

A. Yes. I testified.

Q. Would you agree with me generally that U S West's position in that particular docket was that it wanted to be treated differently than other LEC's in terms of the switched access cost rules?

MR. HEASTON: Objection. I thought the ruling and the motion was the Commission struck any

reference to 91-040.

MR. HOSECK: Sustained.

Q. Do you know what the current interstate switched access charge of U S West is?

A. Not specifically. I think you should ask Dr. Wilcox if that can wait to the rebuttal phase.

Q. And she'll know?

A. I hope so.

Q. You presented some testimony in regard to the subscriber line charge and how that is applicable in the federal level.

A. Yes.

Q. Do you recall that?

A. Yes.

Q. And I believe your statement is that the 25 percent of the loop cost that's allocated through the switched access model is all assigned to the common carriers and none of it is assigned back in the form of a subscriber line charge; is that correct?

A. On the state rules?

Q. On the state rules.

A. On the state rules, yes.

Q. Do you have any information as to what a corresponding state subscriber line charge would have to be to cover the CCL element that's currently run

17  
through the computer cost model?

A. Well, I can tell you that on Sheet A, the model, if you look at -- can I grab another document back here?

Q. Sure.

A. If you look at the cost model Sheet A, look at line 45, common line revenue requirement is 17.8 million dollars.

Q. Do you have the information in there in terms of the total number of your access lines anywhere?

A. No, I don't. I don't have it with me either. Well, I could find access line information. But the model has no access line information in it.

MR. LOVALD: I have no further questions.

MR. HOSECK: TAG Group?

MR. RITER: Thank you.

CROSS-EXAMINATION

BY MR. RITER:

Q. Mr. Culp, I have a few questions. Mr. Lovald was asking you about the interstate charges versus intrastate, and apparently you didn't have that information available.

A. The tariff charges on the interstate versus the tariff charges here?

Q. Yes.

1 A. No. Dr. Wilcox will be able to answer that.  
2 I'm sure.

3 Q. Well, in your testimony on page 12 you  
4 testified to all of the common line pool is assigned to  
5 the carrier common line charge and therefore the  
6 intrastate carrier common line charge is much larger  
7 than the interstate charge.

8 A. Can you point me the line number there?

9 Q. Lines 16 through 19 on page 12. My question  
10 is upon what do you base that testimony if you don't  
11 have the information available?

12 A. Well, the interstate -- before the July 1  
13 increase, the carrier common line rate on the  
14 interstate was somewhere around a half a cent, maybe it  
15 was .7, you know, something like a half a cent. It's  
16 significantly different. In South Dakota when we went  
17 into the -- when we established the switched access  
18 rules, prior to that U S West had been mirroring the  
19 FCC approved access rates. And every time they'd come  
20 to the change, we'd come to the Commission and ask for  
21 them to affirm that and we change our tariff. And with  
22 the access rules we left that, and particularly with  
23 Docket 93-108. And in 93-108 the carrier common line  
24 rate in the phase-in was kept at pretty close to the  
25 FCC rate at that time which is like .7 cents. Here the

Q. The carrier common line rate is four cents. There were  
 magnitudes of difference there. If you follow the  
 value it's four cents.

Q. So even though you're not -- you don't have  
 specific information available that Mr. Lovaid  
 asked you about, do you believe that the intrastate  
 common line charge is much larger than the interstate?

A. The carrier common line charge, yes.

Q. Now, in your testimony you also speak of the  
 sale of 55 locations, I believe. Are you familiar with  
 that? Do you remember what I'm talking about on that?

A. I'm very familiar with it.

Q. After that sale was completed, I presume that  
 those entities that were involved in that sale had  
 depreciation attached to them and that you each year  
 depreciated the facilities that you had; isn't that  
 correct?

A. After the sale?

Q. Before the sale.

A. Yes.

Q. But after the sale did your depreciation that  
 you have used as part of your cost item, did that  
 increase or decrease?

A. The amount of depreciation decreased.

Q. It did?

46  
A. Because of the sale.

Q. So did the total depreciation that you've used in the cost study or cost model, is that lower than it was originally?

A. Because of the sale of the 55 exchanges depreciation is lower, yes.

Q. In the cost model, or in your other information that you have available to you, do you have the total number of minutes that U S West either uses itself or has sold to third parties for intrastate use?

MR. HEASTON: If I might ask Bob, what service?

MR. RITER: Pardon me?

MR. HEASTON: What service are we talking about here?

BY MR. RITER:

Q. Do you understand the question first, Mr. Culp?

A. No, I don't.

Q. What don't you understand about it?

A. Well, the minutes that we sell to third parties. We sell switched access. That's what we sell. That's other wholesale offering and has been since 1984.

Q. Let me ask it this way then: On some of the

1 billings and some of the study results that have been  
2 created in this file, it shows the overall income that  
3 U S West receives from the switched access usage.  
4 doesn't it?

5 A. Can you show me where?

6 Q. Doesn't it?

7 A. The overall income? This is what I have  
8 presented is a cost study.

9 Q. I understand.

10 A. And it does not show income. It does not  
11 show revenues. It shows costs.

12 Q. So standing alone, what you're telling us  
13 today is that the costs might be one dollar and the  
14 income might be \$10, and so you got a \$9 net, and it  
15 doesn't make any difference to your testimony what the  
16 net is that the consumers of South Dakota have to pay?

17 A. I believe if you follow the rules and you  
18 follow the U S West proposal, we are setting the rates  
19 at the cost as defined by the South Dakota rules. So  
20 the net is that the rates equal the costs.

21 Q. And the costs include rate of return for you,  
22 correct?

23 A. Return on our investment, which would be a  
24 rate of return, yes.

25 Q. But wouldn't it also be true that the cost.



Q. Merely looking at cost, doesn't answer the income part of the equation necessarily?

A. Well, under rate of return regulation, utilities earn return on investment. If that's the income you're talking about, there is a rate of return in the cost study, and that would be the income that would be projected by the cost study. It won't be what shows up on the ledger. What shows up on the ledger will be the actual revenues less the actual costs when the rates go into effect.

Q. So what shows up on the actual ledger could be significantly in excess of what your rate of return might otherwise prescribe?

A. No.

Q. Why not?

A. It should be the same because of the theory of the model and the theory of rate of return regulation.

Q. I presume that -- well, strike that. As part of the cost, does U S West cost, using that term as more of a verb -- does U S West cost the access charges to itself as part of the study?

A. Yes, it does.

Q. And so when you have computed the cost result, that cost result would apply not only to

individuals such as my clients, the TAG Group, but it would also apply to U S West itself?

A. Yes.

Q. So that would mean that as far as internally U S West would receive a rate of return on X percent, 10 1/2 or 11, on what it sells to third parties and also what it uses itself?

A. I don't know how you can make that one leads to the other.

Q. Why not?

A. If these costs are put in place on the wholesale access product, U S West will earn a rate of return of around 10 percent. My cost study shows 10.34 percent. It's a return on investment. The access that it sells itself will be to the U S West toll product. Okay? U S West's toll product will earn -- the earnings will be the revenues less those costs. What return on investment they will make, I don't know.

Q. So the U S West toll products are going to increase in cost because of this access rate increase?

A. That's correct.

Q. Didn't Mr. Lovald ask you earlier about a finding that was made recently and Mr. Heaston objected to it because it was a toll cost?

MR. HEASTON: Same objection. This is not a

1 toll docket. This is a switched access docket

2 MR. HOSECK: Sustained

3 Q. Well, Mr. Culp, to determine what you needed  
4 by way of access charges, you looked at the access  
5 charges that you were going to receive from third  
6 parties and also the access charges that you would  
7 receive from U S West, didn't you?

8 A. I did not look at revenues.

9 Q. You look at costs.

10 A. I look at costs.

11 Q. Dr. Wilcox is the revenue person?

12 A. Dr. Wilcox is the pricing person. She won't  
13 she may know. I don't know what she knows. She'll  
14 have to tell you. This is not a revenue. This is not  
15 a revenue hearing. This is a cost hearing.  
16 I shouldn't say what the hearing is. My testimony is to  
17 present a cost study, the costs. You divide it by the  
18 minutes, or the ways you're going to collect those  
19 costs, and then you determine the rates, and that's our  
20 testimony.

21 Q. And Mr. Heaston indicated earlier you don't  
22 have a witness here today, to your knowledge, that's  
23 going to talk about revenue?

24 A. We'll tell you about how much access revenue  
25 will be generated. We don't have anyone here to talk

1 about how that affects toll or how toll is rated

2 Q. But when you talk about access revenue, when  
3 is that access revenue only considered revenue you  
4 receive from third parties such as AT&T, MCI, Sprint?

5 A. When you follow the cost model, the cost  
6 model develops the costs to provide MTS service to U S  
7 West and to interexchange carriers. And when you go to  
8 line 45 of the model, if you look on Sheet A, line 45  
9 of the model, you'll see the revenue requirement to  
10 17.8 million for common line and you go to the other  
11 elements. That is to provide MTS. That is a cost to  
12 provide MTS to U S West and to the interexchange  
13 carriers. And you divide that by both the U S West  
14 minutes and the interexchange carrier minutes and when  
15 you get an indication of what the access rate per  
16 minute is, which is the bottom line of that sheet.

17 Q. Well, when we talk about minutes, didn't I  
18 ask you questions about minutes before and you have  
19 said you don't keep track of minutes? I thought --

20 A. To me, my responsibility in this cost model  
21 really -- you know, we put the minutes on the line  
22 right before, right behind line 45.

23 Q. So tell me again where we are. Sheet A,  
24 which would have been attached to Mr. Best's testimony.

25 A. No, that's Mr. Best's cost model. You have

Q. Total intrastate revenue requirement  
A. No, the switched access revenue requirement

11 for common line, the switched access revenue  
12 requirement for use, and the switched access  
13 requirement for common transport. That's what's  
14 there.

15 Q. Do you have yours in front of you?  
16 A. Yeah, I'm looking at it.

17 MR. RITER: May I approach the witness,  
18 please?

19 MR. NOSECK: Yes.

20 Q. I don't have it in front of me, Mr. Riter, is  
21 it might help me if I can look at what you're  
22 looking at line 45. It says total intrastate revenue  
23 requirements?

24 A. Yes.

25 Q. Okay. I thought that's what I just asked you

1 to look at my testimony from last October and see if  
2 I of that.

3 Q. Wouldn't his be similar to yours as far as  
4 the result?

5 A. It's in the same order of magnitude.

6 Q. And what line are you talking about there?

7 A. I'm saying the revenue requirement is on the

and you said no.

A. But what is this charge showing? It's showing Part 69 toll revenue requirement summary. So the revenue there is the total revenue sum. But to me we provide lots of services. And when you put it in the context I was talking, you have to add total revenue of state requirement. Does that include local? No, that does not include local.

Q. So this shows -- down at the bottom it shows the access element of minutes and shows the minutes at what just about 445,000 -- 445 million?

A. I think it's 445 million.

Q. And does your exhibit show how many minutes would be U S West minutes and how many minutes would be others, belong to others?

A. Dr. Wilcox will be -- is prepared I know she has the answer to where those minutes came from. They include both though.

Q. She would be the one to ask about that?

A. Yes.

Q. And on the right-hand column, which is apparently I, Column I, other, is that in front of you, sir?

A. Yes, I have that.

Q. What generally does the -- are the expenses

included in the other column?

A. Generally speaking, I believe that's private line. It's not what part -- when you go from -- these follow the FCC rules, and with the FCC rules you take Part 16 and you put it into Part 69. The Part 16 is the jurisdictional separations to determine those, and Part 69 is the actual rate elements. Once you get to the jurisdictional separations, you take other things out like local and stuff like that.

Q. And that doesn't enter into the access rate, does it?

A. That?

Q. That column, the other column.

A. The access rates that we are here by rules to determine are common line, local switching, and common transport.

Q. So the answer to my question would be, no, it does not?

A. It's not in there. I'm sorry for being wordy.

Q. That's fine. Why does all of the -- most all of the expense that's termed other apply only to the intraLATA as opposed to the interLATA?

A. I believe it's how the model handles private line, and the model takes private line and pushes it



49  
also intraLATA. The other thing to remember is there's really -- on interstate basis it's different than the other basis and particularly this state's basis where in the West it really doesn't matter if it's intraLATA or interLATA. We have minutes of use of both of these that come into the model, and you're going to get the answer regardless where they show up.

Q. Well, the fact that it really looks like it has to be paid by intraLATA revenue isn't really so?

A. That what has to be paid?

Q. Well, the other column. The other column costs all picked up by intraLATA revenue.

A. The other column is not picked up by anything. All we are doing is picking up common line local switching and transport. Other is what is not picked up, along with the information of billing and collection.

Q. But yet when you go over to the Part 36 total, other is included in that as far as revenue requirements, isn't it?

A. Other in the Part 36 basis is considered local. That's what's local. We don't charge. We don't take those costs in here.

Q. I think one of the questions asked you earlier was whether you had the separations

information, and apparently you don't know how these expenses are separated; is that correct?

A. I didn't say that.

Q. All right.

A. I know as well as anybody in the room, I believe.

Q. I thought you had said like Ms. Hayek

A. You can go back and find the question that was answered, but that was something -- oh, it was a Operations Information System, which is an interesting model that we use to report our costs to the FCC. She is an expert on that, and she'll explain that when she's on the stand. That's for interstate separations. I am the expert on this model.

Q. All right. So as far as allocation, you would be the expert on the allocations process?

A. Of what the model does or what?

Q. Well, yes. Like I'm looking at Mr. Beebe's Exhibit H which is attached to his testimony, which talks about intrastate, and it really allocates -- appears to allocate the expenses amongst various categories.

A. That's what the model does.

Q. Okay.

A. Yeah.

Q. So then my question to you as far as the

allocation figures, are those allocation figures of percentages, are they included in any of these regulations that reference was made to earlier, or are there something that U S West has determined internally?

A. No. They come right from the Part 36 model that the Commission gives us, or the model they give us. And can I elaborate on this? Do you mind?

Q. Let me ask you a couple more questions first. Okay?

A. Okay.

Q. Are you familiar with a rule relative to pricing for the switched access that states how the allocation should occur and what percentages?

A. The rules do that collectively. They were designed to do that collectively, and they're long-standing rules because they came from Part 36 which has been around for years and years and years.

Q. Are you -- never mind. I'll ask someone else. Now, just a couple more things. You had said you received no data requests from MCI, Sprint. Isn't it true that a representative of TAG did participate in the trip to Omaha where data was acquired and that you provided information to the data collectors who were in Omaha at that time?

A. Mr. Jerry Noonan did show up in Omaha. He did not ask any data requests. I offered him several. I said, "The staff is here asking data requests. We're responding to those data requests. If you have data requests, please give them to me." and he never asked.

Q. So you were providing information to staff at the time?

A. I would have to Mr. Noonan if he would have asked.

MR. RITER: That's all I have.

MR. HOSECK: Dakota?

MR. MARMET: No questions.

MR. HOSECK: Commission analyst?

MR. BOLLE: Mr. Culp, you stated earlier in your testimony that the depreciation expense for U S West has decreased as a result of the sale of the exchanges. But on a per investment basis, has that depreciation expense decreased or increased?

A. Well, it stayed the same because of the sale.

MR. HEASTON: Just a minute, Mr. Culp. I have a little problem with Mr. Bolle asking questions. All the other questions have been asked by attorneys. Now, if Mr. Bolle, wants to practice law, maybe he should become a lawyer. And asking questions is a

contested case such as this is the practice of law  
And, therefore, he's not an attorney that I know of.  
and therefore I would object to him asking questions

MR. HOSECK: Your objection will be noted  
the record. Mr. Bolle is acting on behalf of the  
Commissioners in asking technical questions.

MR. HEASTON: Would you affirm for the  
record, Mr. Hearing Examiner, that Mr. Bolle is not a  
attorney?

MR. HOSECK: It's my understanding.

MR. HEASTON: Thank you.

A. Did I answer your question, Mr. Bolle?

MR. BOLLE: You said it remained the same  
this cost study?

A. Well, when we -- what we did with the sale  
exchanges is that we eliminated -- the cost study was  
1995 test period. The 1995 expenses had an  
investment. And what we did was -- and the sale of  
exchanges took place on June 22nd, 1996, so that's a  
of period. And so we identified the expenses  
associated with those exchanges. We identified it  
including depreciation expense, and we identified the  
plant and service, the gross plant, and we identified  
the accumulated depreciation. And we knew exactly what  
that was for the sale of exchanges, and that was

removed.

MR. BOLLE: Can you address Exhibit 63? That's the data request. It says provide work papers reporting changes to depreciation and amortization.

A. Can somebody provide me a copy of that? I don't know what Exhibit 63 is.

MR. BOLLE: Could you go to Attachment C of that exhibit? I believe it's C-2.

A. I'm there.

MR. BOLLE: Can you explain that schedule? In other words, when you come down to the bottom of the page, written in in pen is intra 78,736,492 as investment and for the state depreciation annual 110,247. Can you explain those numbers, and what does that mean?

A. The 78,736,492 would be the depreciable investment associated with those 55 exchanges.

MR. BOLLE: Okay. So would that lead me to believe, then, that the remaining investment in exchanges still owned by U S West would be the 117 million less that 78 million as far as investment for the end of '95?

A. May I say subject to check? I could go find out what the 117 million -- well, ask again what the 117 million, what you think it is?

MR. BOLLE: Is that the total investment of \$444 million intrastate at the end of '95 and the sale of exchanges? Does it remove the 78 million, or is the 78 million is what's left after the sale of exchanges?

A. No, I don't believe that's what this is. I'm not sure what the 117 million is, but it's nowhere close to the investment, the remaining.

MR. BOLLE: Yeah, you know, I don't know what it is either, so I'm asking, you know, what is it? I mean, just understand it's got to be flushed out. It was confusing to me. And the next step is what is the \$110,247? Is that depreciation expense of the remaining exchanges or depreciating expense of the exchanges that were sold and that ties back to a number that looks like 9,140,000?

A. What I don't understand is the 9,140,000. What I do understand is that the intra -- that the person that actually put this exhibit together is in the room.

MR. BOLLE: All right.

A. So I can get an answer to this.

MR. BOLLE: Okay. We can leave that for now then, I guess. And go to Attachment B. And this appears to be your prescription of depreciation expense. And can you give us some insight as to why the

Q. Dramatic changes in those rates? In other words, if you look at the account 2211, electronic-analog, a life has gone from 11 1/2 years to 5.9 years. There's some heavy headers that have significant changes in the rates which have a tremendous impact on the expense. I'm wondering if you can give insight on those, and there's like 246 of them that I have concern with.

A. Actually, the expert on that is in the room, Mr. Bolle, and you would get a much better answer than I could.

MR. BOLLE: Okay. I'll defer these questions to that expert then.

A. They were not scheduled witnesses, but they are experts that would be available for that so.

MR. BOLLE: Who are they?

A. Well, on the depreciation it's Mr. Bill Pearson right there. And the person that actually put together the Schedule C-1 is Jim Phillips, and between him and Bill, I don't know who did C-2 but it's between those two.

MR. HOSECK: At this time I think we'll take a break for about 15 minutes and resume with the questioning of Mr. Culp.

CHAIRMAN BURG: The question I'd have first is are you going to get the information from them and



Q Now is part of your testimony, or are we going to see  
Q Now on the stand?

MR. HEASTON: We can do it as part of Mr.  
Q Now is that's preferable.

CHAIRMAN BURG: Then I guess I would prefer  
Q Now they could get this during this break.

MR. HEASTON: We will see what we can do.  
Q Now that's fine.

(AT THIS TIME A SHORT RECESS WAS TAKEN.)

MR. HOSECK: We'll go back on the record at  
Q Now time.

MR. BOLLE: With respect to the schedule we  
Q Now discussing, have you had a chance to get with you:  
Q Now report and come up with some reasoning and also the  
Q Now difference on the numbers?

A. Let me handle the difference on the numbers.  
Q Now I think that was the first question you asked me. When  
Q Now you look at the sheet, this is -- and you look at that  
Q Now column where it says 12/31/95 investment and it totals  
Q Now \$117,904,000, that's a total state number.

MR. HEASTON: Which sheet in Exhibit 63 are  
Q Now you?

A. I'm looking at Attachment C-2. So that's a  
Q Now \$117,904,000 is a total state number. Apply a  
Q Now separations factor to that and you'll get 78,363,000

that could be assigned to intrastate. And the same thing in the right-hand column where it says intrastate of \$ 110,000, and I believe the number above that is \$ 140,000.

MR. BOLLE: Okay. And what does those numbers represent now? Is that the total intrastate adjustment in intrastate depreciation for those 55 exchanges, or what's left by U S West holdings after the sale of those exchanges?

A. No, it's 55.

MR. BOLLE: It's 55. So that is the adjustment?

A. Yes.

MR. BOLLE: So would that allow me to believe, then, that the 117 was the total U S West adjustment for all of U S West exchanges, or just those 55?

A. Just those 55.

MR. BOLLE: Okay. With respect to Schedule I believe it's a one -- or, no, Attachment B to that exhibit, you've made significant changes to some lives. And I understand you're saying this is a result of a represcription, but could you explain some of the logic behind those lives changing that drastically?

A. What I can explain to you this is the

from the 94-121 docket. This is what was in the 94-121 docket. This is the schedule and it contains the rates. The 2-1-96 column of this is from the 111 docket, and the old prescribed were the rates that were in place before then.

MR. BOLLE: So?

A. This is what -- when the Commission accepted the 111, this is what was in there.

MR. BOLLE: So are you saying because that was agreed to, stipulated to, that these rates were included in that and therefore they don't have to be discussed now? It's a closed issue?

A. I'm saying that this is what the company has been booking is the 94-121. I'm not saying what decision you can or can't answer, Mr. Bolle.

MR. BOLLE: So can you tell us why these rate changes took place?

A. I'm not an expert on why they did. I can't answer that.

MR. HEASTON: Those lives were part of the 111 docket. They were considered and discussed. They are the Commission's prescribed lives. They're also the lives the Commission recently reaffirmed in the 111 docket. And, therefore, I don't see what purpose there would be in relitigating the lives at

It was not an issue in the original hearing  
docket; and, therefore, we would object to any  
discussion on that basis.

MR. BOLLE: I have no questions.

MR. NOSECK: Commissioners?

COMMISSIONER NELSON: Well, I guess I can  
U S West took the position before Judge Zinter  
they would accept the 5.5 cents in October in  
1986. In the same matter U S West was willing to  
accept only the six point -- no less than 6.1 cent. I  
guess. In other words, my question is why does the U S  
West take one position before this Commission and then  
another position in court?

A. Well, I didn't participate in the court.

MR. HEASTON: I'm going to object to that  
question. We took the same question before this  
Commission of 5.5 and 6.1. We agreed to abide by what  
the staff had done. The Commission rejected that.  
ATT's number was 5.5. We explained in Mr. Culp's  
testimony that we haven't taken an inconsistent  
position, so I object to the question.

MR. NOSECK: Your objection will be noted.

MR. HEASTON: I would like a ruling on the  
objection.

MR. NOSECK: The objection to the question

that by Commissioner is noted for the record and  
 it's overruled. The witness should answer the  
 question.

A The 6.4 is my cost study number. The staff  
 was in a year ago and had a number of 6.15 cents. In  
 1985: in that case, I tried to put some bounds  
 around AT&T Witness Pat Parker as to what was -- if you  
 look at all the stuff that she called flaws, how much  
 would those flaws -- if you take them to the extreme,  
 how much could you lower the rates. I did not -- I did  
 not accept the 5.5 as my position. I was just trying  
 to put bounds around to quantify her "flaws" in our  
 study, and that was the 5.5. The company position in  
 front of Judge Zinter, I can't tell you. I did not  
 participate with any discussions with the attorneys as  
 they -- well, that's not quite true. I didn't -- I had  
 nothing to do with the 5.5. In fact, I didn't know  
 what was our position in front of Judge Zinter until I  
 read the transcript. That was something that the South  
 Western people and attorneys had developed. That was  
 not my position. So I wasn't asked on that issue.

COMMISSIONER NELSON: I guess, then, I would  
 like to know if U S West was willing to accept the 5.5  
 cents on the switched access charge in court? Does U  
 S West have a study, a cost study in its possession which

was filed with the Commission which justified the 5.5

A. I have my notes from last year. I went through that. I could generate a cost study that would show the 5.5 cents by eliminating some adjustments and by making some changes to some traffic factors. The primary one there is the prescribed depreciation, and it was based upon the staff position in that case. I hope I answered your question. I mean do I have one in my possession? No. Would it be hard to put one together? No.

COMMISSIONER NELSON: Well, not necessarily would you be the only person who had such a -- would be having a cost study like that. The question really is how or did U S West ever have a cost study that was done that justified the 5.5?

A. The 5.5 was my quantification of those changes that AT&T have there, and I did it with the model and it was a cost study. I never printed it out. And I have the computer model. I don't know if I have that one from a year ago that has the 5.5. I could recreate it, though, from my notes.

COMMISSIONER NELSON: Thank you.

CHAIRMAN BURG: I just have a few, I think, in questioning from, I believe it was Mr. Gerdes but

Q I am not real sure. If the price established -- in answering one of the questions you said that the price establishes a ceiling for the service. Do you remember that question?

A Yes.

CHAIRMAN BURG: Would this allow U S West to price below that ceiling if they so chose?

A I believe the guidelines of the stipulation in the 94-121 docket would allow us that flexibility.

CHAIRMAN BURG: Would it allow U S West to charge a different price to U S West customers than what is charged to the other carriers?

MR. HEASTON: Again, Commissioner, I have to purpose an objection because that's an issue on the tariff pricing. It's not an issue on what the cost of access are and what the price of access should be.

CHAIRMAN BURG: Well, I'm having a problem with that continuous objection because we have an awful lot of testimony from other witnesses that are talking about the effect on their bottom line, and there is an awful lot in the record also that talks about that. That's one of the considerations we should make what the effect on other customer's companies and what the effect on the customers are. And I probably am not able to draw the same narrow line you are between what

a toll and what is switched access. But to me it's an  
 impact on the customers is what I'm trying to get at.  
 And U S West, through this process, is able to  
 charge a different toll price than what some of the  
 other companies will be required to charge if they add  
 switched access, I think it has a very important  
 aspect that we need to know about.

MR. HEASTON: Well, I disagree with you  
 because you have to determine what that price is first  
 by your rules. I mean that's why you did the rules.  
 Rule 03:27:02 makes it very clear that the price is set  
 according to the rules. Now, we stipulated in 121.  
 And this is a legal question. Really you're asking  
 somebody to comment on an imputation, which is actually  
 really a legal question. He doesn't do pricing for  
 toll. He doesn't do pricing for switched access. He's  
 just telling you what the costs are.

CHAIRMAN BURG: And I guess based on that,  
 rather than objecting, he is an expert witness. If he  
 is not qualified to answer because it's a legal  
 question, I accept that.

MR. HEASTON: That would be my objection in  
 this case then.

CHAIRMAN BURG: That leads to my second  
 question then. You indicated that you are a price



regulated company from another question from

He said: is that correct?

A I believe that's true.

CHAIRMAN BURG: And then you also said that  
the model is a rate of return methodology; is that  
correct?

A That's correct.

CHAIRMAN BURG: Is there not a conflict there  
anyplace.

MR. HEASTON: I object. That's, again, a  
question whether or not there's a conflict  
between the stipulation and the rules and the  
interpretation of paragraph 15 of the stipulation,  
which specifically this Commission adopted, which said  
that's how the price ceiling would be determined  
using the cost model, which is a rate of return cost  
model.

CHAIRMAN BURG: Right. And I mean I  
understand then. I understand the inherent conflicts  
that are here, and I think that's one of the things the  
Commission is going to have to struggle with because I  
know there are some conflicts. I recall both  
collectively and rulewise U S West advocating pricing  
regulation. But it appears to me that there's a  
continuous fight here to set rates based on rate of

And I'm having a real hard time, you know, struggling with that dichotomy. But I accept, I'll accept that.

MR. GERDES: Excuse me, Mr. Chairman, may I be heard on this issue?

MR. HOSECK: Yes.

MR. GERDES: Mr. Hearing Examiner, Chairman, I think the other side of this issue has to be heard. What we're talking about are evidentiary matters here. Mr. Heaston is objecting saying that the expert is not qualified for various reasons, either that it's a legal question or it's something else. But I would submit that the witness then can tell you. Mr. Heaston can't tell you.

I would submit that the Commissioners are entitled to ask their questions. And if the witness doesn't know or if the witness is not qualified, then the witness should tell you, not Mr. Heaston. And I would make that position for the record because I want to make that the Commission is losing some relevant evidence here that Judge Zinter has said is for this Commission to decide, and that is whether or not the rate is fair and reasonable and to take into consideration all these other things, as the Chairman said, the impact on the customers and those kinds of

if this witness is able to answer those questions, he should be entitled to answer those questions and not because he's a cost expert and not a rate expert. If he knows the answer, he can say. He can answer the question. If he doesn't know the answer, he can say he doesn't know the answer. I would submit that Mr. Heaston is trying to control what evidence this Commission is going to get, and I would object that's improper.

MR. ROSECK: Mr. Heaston, could you restate your objection?

MR. HEASTON: I object on any interpretation of a legal interpretation of either the impact of the regulation or the impact of the rules and any conflict between the rules and stipulation that is inherently a legal interpretation. I'm the lawyer here for U S Steel. I'm the one that has the expertise and can make that decision, not Mr. Culp. And so my objection is on that basis.

MR. ROSECK: What I'm going to recommend here is that in this respect, as the question may ask a legal question, I would sustain or recommend sustaining Mr. Heaston's objection. However, if the question can be reframed in such a manner that Mr. Culp's ability

to answer it is explored in whatever else he's able to  
 ability to based on his ability, experience, expertise.  
 However, that the matter be approached in that manner.

CHAIRMAN BURG: I guess I will respond simply  
 by saying -- and maybe it's a prerogative of the  
 Commission -- that for my first question I think it's  
 very important that I do know when we're making the  
 decision, because I believe we go beyond just the cost  
 of the and the decision in the rates we set. I think we  
 have to look at the impact on companies and on the  
 consumers and the effect of rates on South Dakota.

I think I would like an answer even if it's a  
 non-filed exhibit as to whether U S West must impute  
 to their toll customers the same thing as what the  
 charges for switched access that they charge for the  
 other resellers or the other companies that they sell  
 to. I think that's very pertinent to what we do here.  
 We had different kind of answers, but I don't care  
 how it's answered. That's something I need an answer  
 to in my decision making. I'll leave it at that.

A couple other questions. Prior to the  
 implementation by U S West of the 6.4 cents switched  
 access charge, which I believe was implemented was that  
 in July? Do you know, Mr. Culp?

A. I think it was in June, late June. I don't

the exact date.

CHAIRMAN BURG: Prior to that time anyway, whether it's really the price that's in effect right now;

is that correct, 6.4?

A. Yes.

CHAIRMAN BURG: U S West's switched access

was around 3.14; is that correct?

A. Actually, I think it was closer to three, but let's say 3.14 to make it easy.

CHAIRMAN BURG: Was the 3.14 cents a rate

was put in at U S West's request?

A. It was a rate that was put in as a result of Request TC93-108, which U S West was a party and signed the stipulation which this Commission agreed to.

CHAIRMAN BURG: Was there a study at that

that that justified 3.14?

A. No. The study at that time justified a rate around 6.7 cents.

CHAIRMAN BURG: Did the 3.14 recover the long run incremental cost for U S West?

A. I don't know. I don't know what the long run incremental cost is.

CHAIRMAN BURG: I thought you said you were a cost person?

A. There's two differences here, Chairman.

I'm a financial cost person. I look at the  
 of the company. I look at the actual costs, the  
 embedded costs. And like I believe that the cost for  
 the carrier common line is four cents based upon the  
 commission model. Where were you to talk to an  
 economist who likes a forward-looking TSLRIC cost  
 study, they will tell you that the cost of TSLRIC is  
 zero. I will tell you that it's four cents.

CHAIRMAN BURG: How are we supposed to  
 decide?

A. Well, your rules are based upon embedded  
 studies. And that was the arguments that you heard in  
 01-040-A, and everybody played it up and they had their  
 bases. And the one that prevailed was the embedded  
 cost study.

CHAIRMAN BURG: You're saying that you do not  
 know if the 3.14 covered incremental costs?

A. I can't -- no, I don't know.

CHAIRMAN BURG: Do you know if the 3.14  
 created a financial hardship for U S West?

A. I don't believe it did.

CHAIRMAN BURG: Do you think that the 6.4  
 creates a -- constitutes rate shock?

A. It depends on who's buying it and what their  
 traffic patterns are and what those companies'

1        confidential -- I would say if the only thing that  
2        you're buying is intrastate switched access and you  
3        didn't use private line and you didn't sell interstate  
4        and your product was just to resell intrastate switched  
5        access, and your cost went up 100 percent, yeah, I  
6        would say that's rate shock.

7                    CHAIRMAN BURG: Let me ask it this way. And,  
8        of course, you said you couldn't answer that. But if  
9        U S West had -- hypothetically, if U S West must impute  
10       that to their own customers, would that be rate shock  
11       to U S West customers?

12                   A. If we had to raise a rate by 100 percent? It  
13       would depend on what rate we're changing by 100  
14       percent. If we were to increase local service by a 100  
15       percent?

16                   CHAIRMAN BURG: No. I'm talking about the  
17       toll service because that's what this goes to.

18                   A. If we were to increase toll service by 100  
19       percent, would that be a rate shock if we were to go  
20       from 20 cents to 40 cents?

21                   CHAIRMAN BURG: Yes; if that's what it would  
22       take. I guess what I'm saying is if you move from 3.2  
23       for switched access charges to 6.4 that you have moved  
24       them to, and that has to be fully imputed to your own  
25       toll customers, would that be rate shock to those

consumers in your estimation?

A. I don't believe that all of that price increase will have to flow through to toll product. In fact, I don't know if any of it has to.

CHAIRMAN BURG: Was U S West being made whole by the 3.14 cents? Do you know that?

A. I'm going to say no. Do you want me to explain?

CHAIRMAN BURG: Yes.

A. I would say no because we're not here in a full rate issue like you handle with electric utilities and sometimes you handle with us where you actually have us bring in our full set of books with all our products and services. You know, that would be something where we'd be made whole. We would have all our pricing and everything in front of you. This is what I would label a single issue. You know, it's switched access.

CHAIRMAN BURG: But don't we have fully allocated, you know, regulation right now where I mean these need to be broke down?

A. Yes.

CHAIRMAN BURG: So you're saying if they were not recovered there before -- let's see, I was trying to remember. I had one other question. I don't



whether it now.

COMMISSIONER SCHOENFELDER: Well, let me just follow up on the rate shock issue. What is rate shock in your opinion?

A I don't know. That's really my honest answer. It's subjective. It's subjective to the buyer, I believe. I mean, I make buying choices where you thought prices were out of line because certain reasons on rate shock. And it's just as all of us have. I believe my expert opinion, I don't know what it is. I think it's subjective. I think there's probably cases where 300 percent is not rate shock and where 5 percent is.

COMMISSIONER SCHOENFELDER: Okay. Thank you Mr. Culp, I want to go back to when we reopened the record and when the Court sent it back here in some of this area. One of the things that I was really really concerned about after the first hearing was the fact that how much firsthand knowledge you had of the inputs into the cost study model. In other words -- and you probably have said this but not specifically some way so just bear with me and let me ask you to explain to us what you've done differently since the first hearing insofar as confirming or verifying information that went into or was included as inputs

the cost study model.

A. Okay.

COMMISSIONER SCHOENFELDER: Have you done something differently, and can you play that out more clearly for me, please?

A. I think the differences are as the company as a whole. What have I done differently? I have entered more numbers. I have looked at more numbers. We have -- I verified all the data responses that went to the staff. Several members of the team that put together the original study had moved on to different jobs, and so we had to bring new people in, and I was the continuity for bringing them in. And two of them will be witnesses here in front of you after me.

There was a significant amount of verification, a lot of it stemming from the staff's questions as to how in depth they went. As far as verifications for checking transactions, you know, down to a transactions level, I did no more of that. I saw the responses that went to the staff, but that was -- I -- to the ledger. And within the finance organization, as we manage our monthly operations and we see the numbers and we see variances, I'm involved in that on a monthly basis. If we see something we don't understand, we get it explained.

Usually we're a large enough company that things are fairly consistent with minor exceptions, and those minor exceptions we spend a lot of time studying what's going on and what wasn't there. Our revenue stream doesn't change significantly month to month. And I'm talking on a South Dakota basis, not even on a U S West basis. So what we did differently was that we spent a lot of time responding to the audit. They forced us to spend a lot more verification work because we were dealing with them.

COMMISSIONER SCHOENFELDER: I want to go back to some of your testimony where you talk about ARMIS data and ARMIS data self reporting. You did explain about some kind of auditing. That is an external audit that is done on some ARMIS data; is that correct?

A. That's correct.

COMMISSIONER SCHOENFELDER: So the comfort level is there. But nationally now, I know just because of some work I'm doing, that there is sometimes questions of ARMIS data and the validity of ARMIS data. So I think my question to you is if some of this data were not accurate, do you have a way that you could verify that? Especially, how would it show up and how would you find it if there were some -- and what I'm not saying someone made this incorrectly on

Q What I'm saying is if there's an error -- I  
 Q happen to have a lovely habit of transposing numbers.  
 Q If this happens is there a way that you can verify that  
 Q there is an error in the ARMIS data or the inputs that  
 Q go into this cost study? Could you explain that to me  
 Q a little?

A Okay. Well, there were some errors into the  
 Q cost study. I mean staff will get up and talk about  
 Q the errors they found. ARMIS, I've never done an ARMIS  
 Q report, and there's different ARMIS reports. You have  
 Q to be careful which one you're talking about and how  
 Q you're explaining it. I know the FCC went to great  
 Q pains and they are still going to pains to try to put  
 Q books and balances in ARMIS. It's their verification  
 Q tool to make it a more effective tool.

I know that, from the company perspective, I  
 Q look back and match ARMIS to the ledger. See, home base  
 Q for me is the ledger of the company and the ledger  
 Q reports of the company. I think what ARMIS is for me  
 Q is another report of the ledger that somebody -- when  
 Q we're talking about the financial part ARMIS, ARMIS is a  
 Q lot more than just financials. But the financial part  
 Q of that is a restatement of that ledger. It's an  
 Q effective tool for saying, well, there's the company's  
 Q ledger. It's on a public database and everybody can a

to the database and bring down the reports, look at the numbers, and they don't even have to ask the company. They can just go get that data.

It has an interstate twist to it, though, and an interstate separations twist. And people that look at it a lot know that and knows that that's there. But it is from the ledger of the company. It is audited following the Part 64, Part X docket, that came out of the FCC. The Arthur Anderson auditors are in the conference room right behind my office in Omaha today auditing this week. They do it on an annual basis. What they're really auditing is they audit the ledger also in a different way. Arthur Anderson is also our external auditors, I'll say, for FCC reporting purposes for the board of directors of the company. So they audit the ledger in that endeavor. Here they're auditing Part 64 and ARMIS. So they're looking at some of what's on the ledger and here is how it's put into the ARMIS system and here is how it's categorized to those accounts in ARMIS.

COMMISSIONER SCHOENFELDER: Thank you. And I want to go back to some questions Commissioner Burg asked you about making the company whole. Isn't attached access, that cost study, that portion, a portion of what you need to recover to make the company

Q. Isn't that one piece of the puzzle?

A. That's one piece of the puzzle.

COMMISSIONER SCHOENFELDER: Okay. But you didn't know if 3.14 cents -- if the company was not being made whole when that rate or that access charge was in place? I think you told him you didn't know if that made the company whole or not, but you didn't look at it in the overall aspect. Surely someone in your company does that.

A. Yeah, it's me so I can't avoid the question. In the 121 docket, in the 94-121, that was a make whole type of docket where we were looking at everything as whole. In that docket we weren't made whole. We fell short of our cost of capital. But it was significant progress, and so the company accepted the stipulation with the staff and was willing to work with that.

When it does something like that, the company is saying what is our position now as far as revenues -- I mean we implement our rates. It's revenues to the company. And then the challenge for the company is, well, okay, is that the level of revenues we need? And then we go back and manage the company and we try to control other things or use other things as we do the company. And that's the way we take this and put it in. We did it. We weren't made whole with 121.

COMMISSIONER SCHOENFELDER: But 3.14 cents,  
is it your testimony that it did or did not make the  
company whole at that time?

A. No, it did not. That by itself did not.

COMMISSIONER SCHOENFELDER: Okay. Then would  
3.14 cents make the company whole?

A. Well, the honest answer is I don't know. It  
could. We'd have to go back and do a full revenue  
requirement of the noncompetitive pot in South Dakota  
and make a determination based upon that if that would  
make us whole or not.

COMMISSIONER SCHOENFELDER: Thank you.  
That's all I have.

CHAIRMAN BURG: I have one additional one to  
follow up. Which docket did you say established the  
3.14? Is that 93-108?

A. Yes, sir.

CHAIRMAN BURG: And I was involved at that  
time in which U S West requested the 3.14, to my  
knowledge, when the cost model indicated it could be  
something over six. Is that accurate?

A. I don't think that's accurate. I think the  
arbitration requested the 3.14. I don't think it was.  
Just maybe it's semantics. I don't want to argue with  
you about it.

CHAIRMAN BURG: I recall, though -- along that line, I recall when it came up was six plus. You said, "No, we don't want that. That would be rate book."

A. Well, I think there were a lot of dynamics going on in that docket. And there were a lot of other players that were involved in it that some of them weren't even in this room. So when we brought the stipulation to the Commission, of course we said, yeah, this is what we're requesting of the Commission. But it was -- it's the stipulation that I'm referring to.

CHAIRMAN BURG: Given the same arguments that you're making for the cost study now, I can't imagine that the same parties that are justifying that cost study would say that it should be anything but that other than U S West.

A. That was a question?

CHAIRMAN BURG: What I'm basically saying as staff was defending the cost study at that time said that it was justified at the six plus. The stipulation -- the request for less than that did not come from staff, as I remember. It came from U S West for the time.

A. Yes, that's correct, true. It came from U S West and the other parties. Staff went into that



representing a phase-in to five cents. I mean  
was Mr. Bolle's testimony in that docket.

CHAIRMAN BURG: And if I recall, U S West  
at the time that six plus, which the study had  
justified, would constitute rate shock. Do you recall  
that?

A. No, I don't recall that at all.

CHAIRMAN BURG: I think that's in some  
testimony. I can't remember.

A. I don't recall U S West ever saying that. I  
don't recall.

CHAIRMAN BURG: And subject to check, I'm  
trying to figure out what has changed so drastically to  
make it rate shock then and not rate shock now.

A. Well, first, I'm not going to let you say  
that I think that was rate shock. Okay? Because I  
don't believe the company said that.

CHAIRMAN BURG: I accept that.

A. I think the difference of where the company  
is now and where they were then, a lot of it stems from  
the Telecommunications Act of 1996. A lot of it stems  
from U S West's position in the long distance market in  
this state as a provider of switched access for those  
providers. And I think our position and the positions  
of the other parties. We were -- back in the earlier

we were worried about keeping switched access. And what we have found is that the significant sellers of long distance have actually just gone around us.

I mean Gateway 2000. Gateway 2000 has a private line link to a carrier. They have a direct link. They don't use -- they don't buy switched access through us or their rider. They have a direct link to that long distance carrier, so they go around our network for the vast majority of their traffic.

The same thing with Citibank. Citibank has a private link with the carrier, and that ties right into their PBX. And so we've lost some of the significant large business. I think the state of South Dakota is doing the same thing too.

Probably every business that has a PBX, when they buy that PBX there's telecommunications consultants that can provide assistance to those communications customers saying that you buy this PBX, we can link you in with MCI, we can link you with AT&T, one of the TAG members. We can buy your toll there. You can go around the U S West network. We don't have to pay those long distance providers. We don't have to pay switched access. We'll buy a private line link from U S West or do one ourselves, usually just buy the private line. That market has changed. I mean we just

that market growing. Throughout our 14 states we  
that private line growing.

CHAIRMAN BURG: So what we're saying is the  
outcome of this will be only those who cannot bypass  
will pay a higher rate?

A. No, no, no. All the carriers can bypass.  
Q. All the TAG people can buy private lines from us  
to establish contracts. We're probably talking  
about medium and large-sized customers. The small  
customer probably doesn't -- you know, I don't know  
where the threshold is where will bypass makes sense  
and where it doesn't. We've lost the significant large  
customer to that though.

CHAIRMAN BURG: Part of it will be the  
costing of private line then, part of the significant?

A. Yes.

CHAIRMAN BURG: Okay. That's all I have.

MR. HOSECK: Does this prompt any redirect?

MR. HEASTON: If I may, please.

#### REDIRECT EXAMINATION

MR. HEASTON:

Q. Mr. Culp, you were asked a question by  
Mr. Brier concerning the nature of inter and intrastate  
LATA. How many LATA's are there in South Dakota?

A. Generally speaking, we say there's one LATA

in South Dakota.

Q. And on a comparable basis, how much interLATA traffic is there?

A. Intrastate?

Q. Intrastate interLATA.

A. Well, if you look functionally what there is, there's basically very little next to nothing.

Q. The cost rules in the cost model, do they produce a revenue requirement?

A. Yes.

Q. And does that revenue requirement recover the cost to providing the service?

A. Of providing that service, yes.

Q. And so that in the sense it being made whole, does that revenue requirement and the price that is associated with that, does that make the company whole in providing switched access service?

A. In providing switched access service, yes.

MR. HEASTON: That's all I have.

COMMISSIONER SCHOENFELDER: Mr. Culp, to follow up on what Mr. Heaston just asked you and is making the company whole, just so it's very clear to me, is switched access subsidizing other services or other services subsidizing switched access? Is that true or not true to your knowledge?

A I think that if switched access is not priced at the level of the Commission rules following, you know, the cost allocation rules and the price determination, then it's below cost. Are there other services that U S West provides that would be above some certain costs like that? Like i.e. toll, would there be a subsidy between those two that toll would be subsidizing access? I kind of fall out of the boat of what subsidizes what. I mean services are above cost and services are below cost. And then to say what are unregulated and what are regulated and what are unregulated? I think we're getting in -- I'm out of there when I get into that.

COMMISSIONER SCHOENFELDER: That's okay.

MR. HOSECK: Is there any recross?

MS. CREMER: I have a question. It's a big question.

#### RECROSS-EXAMINATION

BY MS. CREMER:

Q. Would you agree with me that the increase would affect the intrastate costs of the reseller and U S West for imputation purposes?

A. Would -- I'm sorry, I'm just slow today. Would I agree that an access increase would include -- would it increase the expense to resellers and in the

...ation -- in an imputation analysis?

Q. Would affect intrastate costs of the resellers in U S West for imputation purposes.

A. Yes.

Q. Okay. Can U S West Company long distance complete a call across the LATA boundary as the resellers can?

A. No.

Q. I have one more, I think. So then what you're telling me if you can't do that, then the effect would have the most -- this impact would have the most effect on U S West, then, this increase?

A. Well, U S West has the majority of the minutes. When you look at the 440 million minutes, the majority of those are U S West minutes. So since we would use that access rate becomes access cost to the full portion of our company, yes.

Q. And the effect on the resellers can be offset somewhat by doing interstate?

A. Yes.

MS. CREMER: That's all I have.

MR. HOSECK: Any further recross?

MR. GERDES: I have a follow-up, if I may, to Commissioner Schoenfelder's questioning.

REDIRECT EXAMINATION

MR. GERDES:

Q. I may have misunderstood you, Mr. Culp, but did you say that there is no subsidy built into the new model under the South Dakota rules? Did you just say that in response to Commissioner Schoenfelder's question?

A. On an embedded basis if we charge the rate -- if we charge the costs that equal -- excuse me. If we charge the rate based upon the cost, we would be -- there would be no subsidy with that on a fully embedded financial cost basis.

Q. Well, in your testimony in the last hearing of this about a year ago in response to questions that I asked you, you admitted that there was a subsidy, or you chose to call it a contribution, but there was a subsidy built into this toward the local loop.

A. Can you show me the testimony, please?

Q. Yeah, page 32 if somebody has a transcript. I can't bring my transcript with me.

MR. WELK: This is for the hearing October 9th and 10th, 1996. Did you say 32, Dave?

A. What specifically are you referring to, Mr. Gerdes?

Q. Excuse me, I don't have the correct reference page. I'm going to have to go back and look. I'll

Withdraw the question right now.

MR. HOSICK: Is there any further recross by any other party?

RECROSS-EXAMINATION

MR. LOW:

Q. Yes, if I can follow up on the answer you gave to the Commissioner questions about your -- I mean you didn't concede the change of position, but in terms of the increase in the access rate, the results from the stipulation, and now you said that was due to your position in the toll market and also because of the Telecom Act. Do you recall that?

A. Yes.

Q. And you talked about your position in the toll market, but you didn't explain how the Telecom Act affected your position. Can you do that?

A. The Telecom Act is a general answer. I mean I'm not a specific expert on company policy on that, but I will give you a general answer. The Telecom Act especially is changing significantly the way U S West does business. When we're required by federal law to unbundle our loop, sell those unbundled parts of our loop, and when we're required by law to resell all our retail services, including toll, that has changed our position in all our service, all our toll, all our



It has changed our position significantly.

Q. Well, let me ask you a more specific question to follow up on that, and if you don't know the answer say so. But doesn't U S West perceive the Telecom Act requiring generally a reduction in access charges because of your obligation to offer unbundled network elements at prices lower than that are not prebased determined prices?

MR. HEASTON: I'm going to object to that question because it is a legal question.

MR. LOW: I was asking about the company's policy. If you don't know the answer --

A. I'm not.

MR. HOSECK: The objection is overruled.

A. I'm not the one to answer that question. There's a public policy position as to the pricing of those services, not should we be using embedded cost, should we be using TSLRIC, TELRIC, or that sort of stuff.

MR. LOW: Thank you.

MR. GERDES: I found my spot. Can I get back to that?

MR. HOSECK: Certainly.

#### FURTHER RECROSS EXAMINATION

BY MR. GERDES:

Q. Mr. Culp, I'll show you page 32 of that manuscript and it ends -- I'll show it to you in just a second, but it ends about a page and a half of questioning. But if you look at page 32, line 15, the question is, so we'll agree it's a way of finding a little extra money for paying for the local loop.

Answer: It's a contribution towards the local loop. What he is talking about the fully distributed costs under the South Dakota model, is it not?

A. 25 percent of the local loop costs are included in switched access following the rules of the South Dakota Commission.

Q. Isn't that a subsidy?

A. That's your term, not mine. I don't call it a subsidy.

Q. You called it a contribution, did you not?

A. That's what I called it.

MR. GERDES: Thank you.

MR. LOVALD: Mr. Hoseck, may I ask several questions?

MR. HOSECK: Yes.

#### RE-CROSS-EXAMINATION

MR. LOVALD:

Q. Just as a follow-up, Mr. Culp, because I think you've been asked this question a number of times

Q. I'm having trouble reconciling the answers. But you testified that the three cent rate was not covering the cost of providing the switched access service; is that correct?

A. Correct.

Q. That is if you consider the cost is defined by the Commission's switched access rules; is that correct?

A. That's correct.

Q. And I think in your testimony -- in your detailed testimony you indicated that the current rate that you're charging and that you're requesting be approved is 6.4; is that correct?

A. Correct.

Q. And about four cents of that is the CCL; correct?

A. Correct.

Q. And the CCL is what you are telling Mr. Cordes is the 25 percent allocation of the cost of the local loop; correct?

A. Well, of the nontraffic sensitive plant, which is generally the local loop, yes.

Q. Would you agree with me that I think another U S West witness that, you know, is here, Dr. Barbara Spicex, has testified in previous proceedings that the

Q. The incremental cost to U S West of CCL is zero?

A. I think we should let Dr. Wilcox testify to that. But I think the answer will be yes.

Q. And if you take that testimony and you add the other piece parts to the switched access charge we're still below three cents; correct?

A. Well, if you take 6.4 and subtract four, you're down to 2.4.

Q. You made a statement in the 121 docket that U S West did not receive sufficient revenue to cover all of its costs; is that correct?

A. That's correct.

Q. Were you a part of the negotiations in the 121 docket?

A. Yes.

Q. Do you know whether any consideration was given in the discussions, the negotiations in that docket to U S West Directory publication revenues?

A. By the company, no.

Q. By the Commission or the Commission staff?

A. I'm not aware.

MR. HEASTON: I want to object to the question because the imputation is something that was resolved a long time ago and it was not a part of it, and it's also beyond the scope.

MR. HOSECK: The question has been answered.

MR. LOVALD: I have nothing further.

MR. RITER: I have a couple questions.

RECROSS-EXAMINATION

MR. RITER:

Q. Miss Cremer asked you about cost to U S West. Would this new access rate be enacted -- or it already enacted, but should it be approved and you would be one of the major payers of it because of your toll charges. Would you agree with that? Do you remember that inquiry?

A. The way you described is so different than the way I would describe that. And I don't want to be picking. I don't want to drag this on. I want to be cooperative. To follow the cost allocations of this Commission, which was in a cost allocation docket which is separate than this toll, is an emerging competitive service and it must pay an imputation to the noncompetitive pot for toll service at that access rate. Okay?

Q. So you'll have to pay a larger share of the imputation anyway, larger amount rather than share?

A. Yes.

Q. And, obviously, that would also include, however, the rate of return for you of 10.5, or

Whatever the rate of return is; right?

A. Well, rate of return is the cost of capital. It's a cost to us. It's a cost in the cost model, and it's included in that rate, just like it is for everyone.

Q. So you're paying yourselves more but you're also getting a return on that, aren't you?

A. No, no, you're mixing them.

Q. Let me ask you this question then. If the toll charges costs are going to go up as you predicted, then is that something that U S West is going to have to increase those charges?

A. Toll charges, you mean toll rates?

Q. Yes.

A. I didn't say toll rates are going to go up for U S West.

Q. I thought you said -- okay, you know you didn't say that. But you did say that in response to Mr. Cremer's question that because of the imputation you have to impute more of the expense to tolls, would you not?

A. I answered that, didn't I?

Q. How did you answer it?

A. Isn't that what I answered?

Q. You said yes; right?

A. I believe so.

Q. So if you're going to be imputing more costs to that particular product, don't you have to consider whether or not you're going to increase the cost of that to the consumer?

A. The key word there is consider.

Q. So you'll probably just absorb that and not increase it; and, in fact, haven't you filed a docket requesting specific rates for that?

A. I don't know.

MR. RITER: That's all I have.

MR. HOSECK: Any further recross?

MR. HEASTON: I have none.

CHAIRMAN BURG: I just want to follow up on a question from staff. If I remember right, when staff asked the question that you cannot do interLATA calling so that you could not mitigate some of the costs as other companies would, would that be accurate?

A. We don't have that tool to mitigate costs that other companies have.

CHAIRMAN BURG: And it was also in her question, it was indicated, that resellers do not have this limitation so they can mitigate some of it through interLATA calling; is that right?

A. That's correct.

CHAIRMAN BURG: And you agree?

A. Yeah, I agree.

CHAIRMAN BURG: Would that be true in North Dakota?

A. Oh, gee, would what be first?

CHAIRMAN BURG: If it were an interLATA call to North Dakota by a reseller, would they be able to mitigate it through the call to North Dakota?

A. I'm not understanding.

CHAIRMAN BURG: Well, what I think -- I'm not sure whose testimony because I don't have time to look it up, but in somebody's testimony -- it was a U S West witness showed that North Dakota and New Mexico, which they classified as similar states, had higher rates than South Dakota?

A. That's Dr. Wilcox, in her testimony she says that.

CHAIRMAN BURG: So if that's the case, if the reseller were making a call that originated in South Dakota and terminated in North Dakota, there would be no mitigation of the costs through that call; is that correct?

A. No, that's not correct.

CHAIRMAN BURG: Why not?

A. Because that call from South Dakota to North



1 Dakota would be an interstate call and be governed by  
2 the FCC rates.

3 CHAIRMAN BURG: So they would not need to pay  
4 U S West? If it was to a U S West customer, they would  
5 not need to pay the U S West terminating costs to North  
6 Dakota?

7 A. No. They would be paying the interstate  
8 tariffed rate.

9 CHAIRMAN BURG: Which may not show up as  
10 switched access rates in North Dakota, is that what  
11 you're telling me?

12 A. They would be paying -- we file tariffs with  
13 the FCC just like we file tariffs here. So if it's an  
14 interstate call, it's interstate customer, it's covered  
15 under the jurisdiction of the Federal  
16 Telecommunications Commission. And so the switched access  
17 call in South Dakota would be charged on the switched access  
18 switched access rate. And if it is a terminating call  
19 North Dakota, it would be terminated at the U S West  
20 federal interstate rate, not the North Dakota  
21 rate.

22 The state rates that she's referring to are  
23 for intrastate calls. Intrastate access charges only  
24 to intrastate calls. In other words, a call that  
25 originates and terminates within South Dakota.

CHAIRMAN BURG: Which is not governed by any of the FCC rules on that?

A. That's right.

CHAIRMAN BURG: That clarifies it for me.

MR. HOSECK: Are there any more questions of this witness under any theories of cross, recross, redirect, anything of that nature? If not, this witness may be excused.

We're looking at taking a break at this point in time for lunch and reconvening at 1:00. We'll be in recess.

(AT THIS TIME THE NOON RECESS WAS TAKEN.)

MR. HOSECK: We'll go back on the record at this time. Mr. Heaston, you may call your next witness.

MR. HEASTON: Call Ms. Kramer.

DEBRA KRAMER,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HEASTON:

Q. Would you please state your name.

A. My name is Debra K. Kramer.

Q. By whom are you employed?

A. I'm employed by U S West Communications.

Q. And what is your job with U S West Communications?

A. I'm an accountant who analyzes South Dakota operations, and I'm also the company's subject matter expert on other post retirement benefits.

Q. What is your educational experience background?

A. I graduated from the University of Nebraska at Omaha with a bachelor of science in business administration. My degree, my major, was in accounting. After graduation I passed the CPA exam. Both before and after graduation I worked for CPA firms. At these firms I gained the experience necessary to get an active permit to practice as a certified public accountant. After my jobs there I went on to private industry. At that point in time I changed my status from an active permit to practice to inactive permit.

I then went to work for U S West Communications in 1987. I started out as a corporate book supervisor. Then I went on to become a finance analyst, a regulatory finance analyst, and then to Carrier Market, and 1991 I came back to regulatory finance as a finance manager.

Q. What was your purpose in filing testimony in this case?

A. I coordinated the on-site audit of the Commission staff, and I also reviewed and coordinated all of the data and data request responses that were provided to the Commission staff. Also I'm here to verify under oath that the company's books and records are recorded on the general ledger and as adjusted with reformation adjustments and then included as inputs into the cost model are true and accurate.

Q. You have in front of you what has been marked Exhibit 31. Is that your prefiled testimony in this case?

A. Yes, it is.

Q. Do you have any corrections to make to that testimony?

A. No, I do not.

Q. If I were to ask you the questions contained in that prefiled document, would your answers now be the same?

A. Yes, they would.

MR. HEASTON: I will offer Exhibit 31.

MR. HOSECK: Any objection? Being none, it will be admitted.

MR. HEASTON: I have no further questions and

would offer Miss Kramer for cross-examination.

MR. HOSECK: Staff, do you have any  
cross-examination?

CROSS-EXAMINATION

BY MR. CREMER:

Q. Good afternoon, Miss Kramer. My name is also  
Kramer, just spelled differently. Just spelled  
properly. You said you coordinated the on-site  
investigation that staff did. Do you know how many  
hours or how many documents -- let me ask two  
questions. How many hours did U S West employees  
record in this on-site investigation?

A. In excess of 1,100 hours.

Q. Do you know how many documents were produced  
for this phase of the docket?

A. Approximately 10,000 pages.

MS. CREMER: That's all I would have. Thank  
you.

MR. HOSECK: Sprint?

MR. LOW: No questions. Thank you.

MR. HOSECK: MCI?

MR. GERDES: No questions.

MR. HOSECK: AT&T?

MR. LOVALD: No questions.

MR. HOSECK: TAG Group?

MR. RITER: No questions.

MR. HOSECK: Dakota?

MR. MARMET: None.

MR. HOSECK: Commission? I think that concludes this witness's testimony.

REDIRECT EXAMINATION

MR. HEASTON:

Q. In following up with the staff's question, how many data requests did we receive and answer from the Commission staff?

A. 107.

MR. HEASTON: That's all I have.

MR. HOSECK: Are there any other questions of this witness?

MR. HEASTON: None from U S West.

MR. HOSECK: There being none, you may be excused. Mr. Heaston, you may call your next witness.

MR. HEASTON: We would call Ms. Hayek.

DEBORAH HAYEK,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MR. HEASTON:

Q. Would you please state your name.

A. Deborah Hayek.

Q By whom are you employed?

A I'm employed by U S West Communications.

Q And what is your job with U S West Communications?

A I am separations supervisor.

Q What are separations?

A Separations is the allocation of cost to interstate and intrastate based on the FCC Part 36 rules.

Q You were here earlier when Mr. Culp testified?

A Yes.

Q And you heard him explain what Part 36 is?

A Yes.

Q And was his description accurate?

A Yes.

Q Would you please describe your educational experience background with U S West?

A Sure. I have been employed by U S West Communications for twenty-nine years. And I started my career in operator services, holding a variety of positions in that department while obtaining a bachelor of science degree in education from the University of Nebraska at Omaha. In 1983 I joined the Division of Revenue Department as a separations supervisor, and in

Q. As a separations supervisor I was the key player explaining the data requests from the National Airplane Carrier Association audit that was conducted. I explained the separations inputs that U S West uses in the NECA pooling process. The results of that at that time were favorable. Later in 1992 and '93 I chaired a committee within the Separations Organization to redesign the information separations, the Separations Information System that U S West currently uses today.

Q. And what is the purpose of your testimony today?

A. I'm here today as a separations expert to advise you that the Part 32 information that enters currently, the Separations Information System, which also goes through the Part 36 program, is accurate. That the Part 36 program which produces the subject separations data is the input source for the allocation, the cost allocation manual model.

Q. You have in front of you what has been marked as Exhibit 32.

A. Yes.

Q. Can you identify that?

A. This is the testimony that was filed on my behalf.



Q Okay. And do you have any corrections to  
make to that testimony?

A No, I don't.

Q If I were to ask you those questions in that  
document today, would your answers still be the same?

A Yes.

MR. HEASTON: I would move the admission of  
Exhibit 12.

MR. HOSECK: Is there any objection to the  
admission of this exhibit? There being none, it will  
be admitted.

Q With your responsibilities to review the  
operations and to run a separations process, did you  
ever or attempt to verify the data that is  
contained --

A Yes, I did.

Q -- in those studies?

A Yes.

MR. HEASTON: I have no further questions.

MR. HOSECK: Cross-examination by staff?

#### CROSS-EXAMINATION

MR. CREMER:

Q Good afternoon. Could you explain to us how  
the Separations Information System works?

A Basically we bring in through a mechanized

process the Part 32 accounts and Part 64 accounts to the Separations Information System where the Part 64 accounts are subtracted from the Part 32 accounts to produce a subject to separations result and that flows into the Part 36 program.

Q And when you do that, is that in accordance with Part 16 or Part 69?

A. That's with Part 36, the FCC rules.

Q How does -- and maybe you already explained

how does Part 32 and Part 64 data enter the SIS?

A. Okay. I'm sorry. Partly through a mechanized program that has been developed for us. We have this program that brings it into a form we identify as the M-15 form whereby we can recognize the Part 32 data, which is the ledger data, and the Part 64 data. And on that M-15 form program you can see where the two are, where we take Part 32, subtracting out the Part 64 information, which produces the subject to separations. And through that M-15 form it gets processed through the rest of the system.

Q. How do traffic factors enter the Separations Information System?

A. Our traffic organization has a mechanized program that they feed to the main system that's loaded into the traffic preprocessor of our program.

Q. And what are traffic factors?

A. For that I believe you'd have to be -- a better explanation would come from Mark Johnson, who's here.

Q. I think the last question you answered to Mr. Heaton was that you verified the information. How did you verify?

A. I verified the Part 36 information that was used as the source of the first source of inputs to the 6002 allocation manual back through our system in Part 36. I tied it to our Part 36 program back to our programs, or to the M-15 program, which would bring it in the ledger accounts and the Part 64 information.

MS. CREMER: That's all I would have. Thank you.

MR. HOSECK: Does Sprint have any ~~ONCAS~~-examination?

MR. LOW: No, thank you.

MR. HOSECK: MCI?

MR. GERDES: No questions.

MR. HOSECK: AT&T?

MR. LOVALD: No questions.

MR. HOSECK: TAG Group?

MR. RITER: Just a couple, please.

CROSS-EXAMINATION

BY MR. RITER:

Q. I'm Bob Riter. I met you earlier. I have a couple questions that I wanted to follow up on the allocation process. Apparently this allocation schedule or system is not in the South Dakota rule but rather is in the FCC rules?

A. Right.

Q. Is that correct?

A. Yes.

Q. And I was looking at one of the divisions and it says total "big three expenses." What's that relate

A. That identifies the plant, specific plant. Nonspecific, there's a third piece. I can't remember what it is without looking. I'm sorry.

Q. Well, what do you mean by plant specific

A. Those would be like your M-6,000 accounts, say, 1062, 20 accounts that are coming from the Part 1 ledger data.

Q. Now I understand.

A. I'm sorry.

Q. Is there any way to put that in a way that even I could understand it?

A. I'm sorry, what was the question?

Q. Is there a way to put that in testimony that might understand? I mean is there a description as opposed to 32 and 63 and whatever?

A. I believe in your South Dakota rules, in the general section it identifies your big three expense allocators, and that would identify the specific accounts there that is used in separations.

Q. And we could go to that and figure it out?

A. Yes.

Q. And apparently, then, when you look on the tabbed column where it says total intrastate and on the big three it says .2398 about 24 percent, that would mean 24 percent of the costs of the big three are allocated to the intrastate costs?

A. Yes.

MR. RITER: That's all I have. Thanks.

MR. HOSECK: Dakota?

MR. MARMET: No questions.

MR. HOSECK: Commissioners?

CHAIRMAN BURG: I just have one more for clarification. You do the separations between intra and inter; is that correct?

A. Yes.

CHAIRMAN BURG: You also do separations among

Q 14 states of your overall costs?

A. Our system is for 14 states.

CHAIRMAN BURG: But I say you break them down per state, or does somebody else do that?

A. Yes, we break them down by state.

CHAIRMAN BURG: That's your responsibility?

A. Yes.

CHAIRMAN BURG: The total company costs should be allocated to South Dakota?

A. I don't have that number offhand.

CHAIRMAN BURG: I didn't mean -- but that's a responsibility that you have and then it's further broken down between inter and intra when you get the South Dakota portion out?

A. Yes.

CHAIRMAN BURG: Thank you.

MR. HOSECK: Does that prompt any redirect?

MR. HEASTON: None.

MR. HOSECK: Any other questions of this witness by anyone? There being none, you're excused.

Mr. Heaston, do you have any further witnesses at this time?

MR. HEASTON: I have no further witnesses, but hold on just a second, if you would, please. I have one request of the Commission if I can find it

1 would ask that the Commission take official notice of  
2 the record and orders in those dockets that have been  
3 filed with the Commission since 1990 since these rules  
4 went into effect principally in 1995 through 1997 of  
5 filings by other local exchange companies in the state  
6 of South Dakota with regard to switched access in  
7 conjunction with the rules found in 20:10:27 through  
8 20:10:29.

9 MR. HOSECK: Could you explain the relevance  
10 of your motion for judicial notice of those items?

11 MR. HEASTON: This shows the -- basically  
12 will show what rates have been filed and approved  
13 and/or approved with the Commission using the same  
14 rules that U S West uses for other companies who are  
15 also local exchange companies who use the rules and the  
16 model and will show what the prices are in the market  
17 in the switched access market in South Dakota.

18 MR. HOSECK: Based upon the Commission's  
19 action in this case striking certain evidence and  
20 testimony in Mr. Culp's prefiled testimony, I would  
21 recommend that the motion be denied.

22 MR. GERDES: For the record, Your Honor, Mr. Culp  
23 would also object to the taking of judicial notice.  
24 There's no showing that these documents would be  
25 comparable to the issues involved in this docket.

MR. HOSECK: Does anyone else have any response on this?

MR. RITER: The position of TAG would be

MR. HOSECK: The motion to take judicial notice as moved by U S West will be denied.

MR. HEASTON: I would like -- in order to preserve the record, I would like to have marked as Exhibit 154, which is a response to the data requests which lists the dockets to which I was referring.

MR. HOSECK: This exhibit is an offer of proof, is that correct?

MR. HEASTON: Yes, that's correct.

MR. HOSECK: It will be noted in the record as Exhibit 154 as an offer of proof. Anything further?

MR. HEASTON: I have nothing further.

MR. HOSECK: One question I had -- perhaps I missed it -- was Mr. Culp's prefiled testimony offered?

MR. HEASTON: Yes, it was offered and admitted.

MR. HOSECK: It was admitted. It was subject to the objections of the Commission striking certain portions of it. The record should reflect that it



the case. Do you have any further witnesses to call at this time?

MR. HEASTON: No, I do not.

MR. HOSECK: Okay. At this time, staff would present their case.

MS. CREMER: Staff would call Harlan Best.

HARLAN BEST,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CREMER:

Q. Would you state your name and business address for the record.

A. Harlan Best, 500 East Capitol, Pierre, South Dakota.

Q. What's your current position, Harlan?

A. Deputy director of fixed utilities.

Q. Could I get to you speak up a little bit? How long have you been with the Commission?

A. Since October of 1990 -- 1975.

Q. Were you one of the analysts assigned to the docket?

A. Yes.

Q. And have you reviewed U S West's application and all the prefiled testimony?

A. Yes.

Q. Did you prefile testimony in this docket?

A. Yes, I have.

Q. Before you should be what's been marked for identification as Exhibit 38. Do you see that?

A. Yes.

Q. Can you identify that for us, please?

A. This is my prefilled testimony, along with a Schedule A, which is the on-site investigation report conducted by the South Dakota staff in this docket consisting of some ten pages. Schedule B is the cost study that staff has submitted in this proceeding, which consists of through Sheet X.

Q. Are there any changes or corrections to that prefilled testimony?

A. Not that I'm aware of.

Q. If I were to ask you all of the questions provided in that testimony, would you give the same answers?

A. Yes, I would.

MS. CREMER: I would move to admit Exhibit

MR. HOSECK: Is there any objections? There being none, it will be admitted.

Q. What's the purpose of your testimony today.

Warlan?

A. To express based on my -- express to the Commission based on the Administrative Rules 20:10:27 through 29, inclusive, what the switched access rate should be for U S West.

Q. Do you have an opinion as to whether or not U S West followed the switched access rules in this case in their cost study?

A. Yes. Both staff and U S West followed the Administrative Rules 20:10:27 through 29.

Q. Can you summarize the process that you went through to analyze the application?

A. The start point upon the reopening of the docket by the Commissioners was to start with the 1993 general ledger of the company. From that was removed Part 64, which is the dereg portion. That then arrives at Part 32 -- or Part 36 numbers, I'm sorry. That are subject to separations. Staff then made a number of known and measurable changes, and those come up on my schedule sheet. The known and measurable changes are shown on Sheet X. Those get carried forward to Sheet W, and then they get carried from Sheet W forward to Sheet V, which is the input sheet to the Commission cost study that runs the program that's in accordance with the Administrative Rules.

Q When a LEC files for switched access rate, is the same process generally followed?

A Yes, in that the company is requested to file a copy of their general ledger. That is compared to the sheet V inputs. If there is any difference, the company is requested to show what they did. Some companies make known or measurable changes. Some just make adjustments for out-of-period occurrences. Rates of use are also reviewed.

Q Did you participate in an on-site investigation regarding this docket?

A Yes, I did.

Q And when was that?

A The first trip was made July 21 through July 25, and a second trip was made August 13 through the 14th of this year.

Q Where was this on-site investigation conducted?

A It was in Omaha, Nebraska.

Q Who participated from staff in those trips?

A Mr. Rislov, Mr. Knadle, Ms. Stangohr, and myself did the July 21 through July 25. Then on August 13 through the 14th, Mr. Knadle and I made the road trip to Omaha. While Mr. Knadle and I were on the road getting to Omaha, Mr. Rislov dealt with the U S West

individuals to gather expense information for us to  
look at upon our arrival on August 13th.

Q Do you recall who from U S West participated  
in this investigation?

A We met with Wayne Culp, Deb Kramer, Jim  
Phillips initially. And then we went into a  
teleconference with Bill Curtis and Dave Corning from  
Denver. Shortly after that meeting started, Mr. Noonan  
from the TAG intervenor joined the process for that day  
on Monday the 21st. Later in that week we met with  
Barbara Wilcox, Judy Nigera, Lucy Jones. They appeared  
by teleconference from Denver. I later had further  
communication with a Jackie Sipp. We met with and had  
further conversations with Mark Johnson, Deborah Hayek,  
Ed Walchar, and Kathleen Tuttle.

Q What was your purpose in conducting this  
on-site investigation?

A Based on the Commission order to re-open this  
matter, staff was directed to make an on-site  
investigation, on-site review of the, to use my words,  
books and records of U S West to verify the inputs to  
the cost study.

Q What type of on-site investigation did you  
conduct?

A We did an accounting analysis review.

Q And why did you do this type of investigation  
review?

A We did not get into the managerial  
operations making as far as did the company pay too much  
or too little for any type of asset or as an expense  
item, was it incurred improperly. We did not get that  
deeply into the records of the company. It was to  
verify the inputs that were used in the cost study by  
U S West.

Q Could you summarize for us what you did in  
these what you reviewed?

A The start point with Mr. Curtis and  
coming from Denver was to get an overview of the  
accounting transactions that U S West undertakes on  
both a company-wide level and also on transactions that  
occur South Dakota. Based on that we then reviewed  
continuing property records, outside plant records,  
volume of use, traffic factors. And on the second  
pass down the expense transactions were sampled and  
reviewed.

Q Can you give us an idea of how you reviewed  
these or what levels you looked at?

A For the outside plant records and continuing  
property records, those were reviewed by Mr. Knadle  
and, I believe, by Ms. Stangohr. As far as the

Regarding transactions, there is an exhibit in the record that gives the number of transactions that have that did occur during 1995. For the expense side what we did is we requested U S West to put all of the expense items and sort them from largest to smallest by dollar volume. We then decided to go after the large dollar volume items, so we sampled, I think it was, six different accounts; and we continued asking questions of U S West until we got to get further down to each of those accounts that were sampled. And we got down to actual invoices on a few of those items.

Q. What did you do with the results of your investigation?

A. An example would be for minutes of use, it was determined that there were minutes of use for before it had been -- they were -- the number of minutes recorded was over actually paid for, but there was a problem with reading the tape. We made an adjustment for that into the minutes of use. So based on what we -- if we found anything that needed to be rectified, we did make those corrections into the staff report presentation, which is attached to my testimony.

Q. So you did find some things to modify?

A. Yes, we did.

Q Were there any of a significant nature?

A Well, the minutes of use increased. There was a traffic factor that had been -- when the human was involved with the transaction, there was a number that was picked up incorrectly which changed the total minutes, which carried forward to Sheet G, which did have an impact on the cost study in that respect.

Q You said that summary was attached to your verified testimony, the summary of what you did in Chicago?

A Yes. That is the report that is attached as Schedule A to my Exhibit 38.

Q Do you recall what switched access rate the staff recommended in what's been referred to as the first phase of this docket?

A I believe it was 6.15 cents.

Q What is the switched access rate staff is recommending at this point?

A Our Sheet A of Schedule B attached to my testimony it indicates on a rate of 6.09 cents. You can't compare the 6.5 directly to the 6.09 cents in that minutes of use have changed.

Q I'm sorry, could you repeat that?

A The 6.15 has a minute, a number associated with minutes of use. That minutes of use number has



changed in the presentation that staff has now and  
develops a rate of 6.09 cents.

Q Do you recall Mr. Culp's testimony, and I  
believe he said U S West is proposing a switched access  
rate of 6.47

A Yes, I heard that testimony.

Q Do you know why staff's rate differs from U S  
West's rate?

A Staff did not accept all of the adjustments  
proposed by U S West. Staff also updated the expense  
of. I'm sorry, updated the investment and  
depreciation associated with the sale of 55 exchanges.  
Staff also included an adjustment for removal of  
copperline, which the U S West cost study does not do.

Q In comparing staff's proposed rate to the old  
rate of 3.14, what additional revenue is generated? Do  
you know the amount?

A The 3.14, I believe, generated approximately  
11 million dollars. And staff's rate would generate  
approximately 27 million dollars based on 1995 demand.

MS. CREMER: That's all the questions I  
have.

MR. HOSECK: Cross-examination by U S West?

MR. HEASTON: Thank you.

CROSS-EXAMINATION

Q. MR. HEASTON:

Q. Mr. Best, in a period from July 21 to 25 and also August 13, 14 and in the time you spent before, during, and after those visits to Omaha, how much time do you believe or do you know you spent in conducting your audit of U S West's ledger and numbers which were part of the input to the cost model?

A. I was going to add that up over the noon hour and I just didn't have to time to do so.

Q. But you do have that data and it could be provided?

A. Yes, it is available.

MR. HEASTON: I would ask that Mr. Best provide that.

MR. HOSECK: As a late-filed exhibit?

MR. HEASTON: As an exhibit, yes.

MR. HOSECK: The request will be --

MR. WELK: Reserve 155 for that late-filed exhibit?

MR. HEASTON:

Q. What's the approximate volume of documents that you reviewed in conducting your audit?

A. What was reviewed on site, or what was actually received in the form of data response?

Q Both.

A For data responses we received, I'm guessing, probably three and a half feet stacked high of paper. And in addition to that information there was board of directors' minutes and internal audit information that was reviewed by staff but was not included in the data responses due to the confidentiality nature of the documents. And there was additional papers that were located in Omaha that were not copied.

Q So that the record is complete on my offer of evidence, in front of you is an exhibit, is an Exhibit

A Yes.

Q Did you prepare that?

A Yes, I did.

Q On top there's noted in pencil that this was corrected on September 8th, 1997. Was there a correction made to the original response?

A Yes. I wrote that on the top of the document that I had faxed to -- I personally faxed it to Culp; and staff counsel, I believe, sent it to some counsel for U S West.

Q What did you have to correct?

A What I had to correct, upon getting away from looking at the numbers and doing something over the

Q. I came back and on Monday morning and looked at the switched access revenue requirement and minutes associated with the 1997 filings for McCook, Nebraska. Valley, West River at Bison and West River in Nebraska. When I put the original document together, I noticed the filing date and the docket number column was not -- I picked up the old switched access revenue requirement and access minutes of use.

Q. Now, on that document there are acronyms. For the record would you identify what CCL stands for?

A. Carrier common line.

Q. And LS?

A. Local switching.

Q. LT?

A. Local transport.

Q. And if you notice, over in the top on the right-hand F equal O and T. What do O and T stand for?

A. Originating and terminating.

Q. And you have the acronyms SDN?

A. South Dakota Network.

Q. And LECA?

A. Local Exchange Carrier Association.

Q. And is it fair to say the companies listed under LECA down to DCT are a part of LECA?

A Those are the cost companies that make up

Q

Q Do these dockets represent all of the  
exchanged access providers in the state, these filings  
in these dockets?

A Yes, they do.

Q That's all I have on that. You described the  
discrepancy between the 6.15 and 6.09 cent result that  
you got in a difference between minutes of use. Why  
was there a difference in minutes of use?

A In response to a data request there was the  
minutes of use were submitted to staff. In reviewing  
those minutes of use, it was found that there were for  
example an example is the sale of exchanges or 55  
exchanges that were sold. In counting the number of  
exchanges listed in that data request, 51 were listed.  
The minutes of use included 51 exchanges rather than  
55 exchanges. So that minutes of use there would  
be because there were actually more minutes of  
use that should have been removed from the cost study.  
There was also a conversion factor that is used in  
determining U S West's access minutes from conversation  
minutes. An incorrect factor was picked up on two of  
those items. One of them increased minutes of use, one  
decreased minutes of use.

In reviewing the minutes of use associated with Dakota, it was found that four months had picked up a lower minute of use number than what should have been picked up, so an adjustment was made for that, for those minutes. That amounted to, I think it was approximately \$50, which would have been -- should have been collected from -- this is set forth on page seven of Module A to my testimony. It goes into further detail as far as what changed from the minutes of use, and suggest that each of those changes would have made.

MR. HEASTON: I have no further questions. I would ask, Mr. Hearing Examiner, that the testimony of what was on Exhibit 154 be added to my offer of proof.

MR. HOSECK: It will be received.

MS. CREMER: Mr. Hoseck, I forgot one thing. I wanted to offer Exhibits 46 through 152, which are the responses by U S West to Commission staff. Now, we can go through those one by one, or they can be submitted in. It doesn't matter to me.

MR. HOSECK: At this time I'm going to take your motion under advisement, and we'll have a ruling on that before the conclusion of the hearing. Because of the logistics involved, we're going to take it under advisement at this time. There will be a ruling before the end of the hearing.

MS. CREMER: But my one concern is that I want to be back here in a year because there's something on the record, you know, that staff backed by something because it's all right

MR. HEASTON: For purpose of the record, U S has no objection. We would stipulate those minutes in.

MR. HOSECK: If anyone else has a comment on this, we may as well take it at this point in time. We're going to be a reserved ruling on this matter at the end of the hearing.

MR. LOVALD: We don't have any problem with presenting them in.

MR. GERDES: The question was that the question -- the huddle was if we save all this time by not going through the boxes, if we could quit early and go back golf. That's a joke. Excuse me. I have no objection.

MR. LOW: Sprint has no objection to presenting.

MR. RITER: Dakota has no objection to the presentation.

MR. RITER: TAG has no objection.

MR. HOSECK: We will reserve a ruling on that

Q And the end of the hearing. Is there any  
 further examination by Sprint?

MR. LOW: Yes, just a few questions.

CROSS-EXAMINATION

Q MR. LOW:

Q Mr. Best, I just want to make sure I  
 understand the scope of your audit. As I understand it  
 from your report and your summary that you gave, your  
 primary emphasis was on verifying that the inputs into  
 the cost study tied back, if I can put it that way, to  
 the books and records of the company. That was one  
 emphasis. And then you also made or reviewed their  
 telephone adjustments for some period expenses and so  
 forth. Would that be the other?

A This was not an audit. It was on-site  
 investigation.

Q Okay.

A But the way you summarized it is, yes, that  
 would work.

Q Okay. I'm glad you cleared up that phrase,  
 as far as the word audit. In your investigation did  
 you look at any costs that may traditionally not be  
 allowed to be passed through of under regulation, rate  
 of regulation, and excuse my ignorance of South  
 Carolina tradition, but such as charitable donations or



expenses?

A There is a specific adjustment for pioneer expense that is excluded, and that is based on past Commission precedent.

Q And what is pioneer expense?

A That is an organization of retired or past employees of U S West.

Q And but there are no other -- you didn't include any other expenses for traditional review or some other type review?

A I believe that the company, when they filed their original cost study with adjustments, that they picked up the past Commission items that shouldn't be included. Another example would be plant under construction that is allowed, if you will, in the cost study. But based on prior Commission orders U S West did not include plant under construction in the cost study.

Q So you relied on their exclusion of those expenses?

A I'm trying to think if there's anything else that the company did not exclude that had been excluded by prior Commission orders, and I can't recall any.

MR. LOW: Thank you. No other questions.

MR. HOSECK: MCI?

CROSS-EXAMINATION

Q. TO COUNSEL:

Q. Mr. Best, if I understand it correctly, this model that we've been talking about is a method of arriving at the fully allocated costs to provide the service. And in this case we're talking about switched service, would that be correct?

A. It is the way to come up with the rate based on the present Administrative Rules.

Q. Right. And would rate basing be the same thing as fully allocated costs?

A. Rate base.

Q. You used the term rate base in your answer. And the term fully allocated costs. And my question I want to make sure we're talking about the same thing.

A. In that the rules, the present Administrative Rules are based on embedded cost with a rate of return element in it, yes.

Q. Okay. So, again, just so I'm understanding and it's clear in the record, the use of the model contemplated by Chapters 27 to 29 is the method provided in the rules for arriving at fully allocated costs for providing a particular service. And in this case we're talking about access rates, would that be

Q. These rules are specifically for switched

A. Yes.

Q. So you're agreeing with my statement?

A. Well, you said a service such as, but it's

Q. It's the service that is used in these

A. Alternative Rules.

Q. I'm not trying to be smart with you. I'm

trying to make sure it's clear on the record. You're

agreeing with me and you're kind of qualifying. So,

again, would it be correct that for the purpose of

applying the fully allocated costs for switched access

one of the rules in Chapters 27 to 29 would be the

method contemplated by Commission rules; is that

correct?

A. Yes.

Q. Thank you. It would be correct, would it

not, that the cost model that we've just referred to

does not address the price of alternative services,

would that be correct?

A. That's true.

Q. Would it be correct that that cost model does

not address the overall market for switched access

services?

A. Yes.

MR. HEASTON: I would object to that question. I mean we've been told the overall market is the issue here. I could not get a document which was to mark 154, so I would object to that question.

MR. HOSECK: Well, the question has already been answered before the objection was entered.

MR. HEASTON: Move to strike.

MR. HOSECK: The motion to strike will be denied.

Q. Would it be also be correct that the cost model does not address the affordability of the price for the switched access services?

A. Yes.

MR. HEASTON: I would object to that -- or move to strike that question and answer for the same reason as before. The market and affordability is not the issue here because that evidence can't come in.

MR. HOSECK: Mr. Gerdes, do you want to respond?

MR. GERDES: SDCL 49-39-1.4 says that is one of the five things that this Commission is to determine is to consider in determining a fair and reasonable rate. And I would submit that it is clearly relevant to the Commission's determination here.

MR. HOSECK: Mr. Heaston, do you have a

\*\*\* 7:45 \*\*\*

MR. HEASTON: Yes. You've been excluding that exact evidence, which is in Exhibit 154 and in the testimony of Mr. Culp.

MR. HOSECK: I'm going to overrule the objection in this case. If you want to have a standing objection on that, we'll let you have it.

MR. HEASTON: I do want a standing objection.

MR. GERDES: Would that also be correct, Your Honor, concerning the prior objection which dealt with the affordability, which is also a statutory element?

MR. HOSECK: Yes. I'll withdraw the ruling as that. I'll let U S West have a standing objection as that. And you may proceed.

MR. GERDES: Thank you.

Q. And, finally, would it be correct that the computer model also would not address the impact of the price of switched access services on the commitment to provide affordable universal service?

A. Yes.

Q. You agree with Mr. Culp that the cost model establishes a ceiling?

A. Yes.

Q. So, in other words, the Commission could approve a rate less than the ceiling, would that be

MR. HEASTON: Objection. Calls for a legal

MR. HOSECK: Repeat the question, please.

Q My question was so the Commission could approve a rate less than the ceiling?

MR. HOSECK: If the objection is that is a question legal in nature, I'll overrule it.

MS. CREMER: I, as staff attorney, would join in this and agree with U S West that I do believe it requires Mr. Best to interpret the law and what the Commission's powers are under that.

MR. HOSECK: The ruling stands.

MR. CERDES:

Q Have you answered the question?

A I would imagine they could set something less than that's what they so chose to do.

Q And also the computer model would not address the issue of the public interest, would it?

A To use Mr. Culp's word, a subjective opinion on what is public interest, no, there's no way to quantify public interest in a model that I am aware of.

Q And the model would also not address rate shock, would it?

A No.

Q Nor would the model address the impact on  
passengers of long distance service, would it?

A No.

Q I just want to ask you a couple questions  
about Exhibit 154, which is this exhibit setting forth  
well, if I'm understanding correctly, it attempts  
to set forth --

MR. GERDES: Excuse me, before I ask the  
question, Your Honor, I'd like this cross-examination  
on Exhibit 154 to be in response to Mr. Heaston's offer  
of proof. In other words, I'm not conceding that 154  
should be admitted, but he was permitted to ask  
questions of Mr. Best of the exhibit and these would be  
my cross-examination to his examination on the  
exhibit.

MR. HOSECK: So, in other words, this would  
all comprise a part of the offer of proof, is that what  
you're saying?

MR. GERDES: That's correct.

MR. HOSECK: Proceed then under those  
conditions.

MR. GERDES: Thank you.

Q If I'm understanding correctly, Exhibit 154,  
the last three columns on the right, if you add them  
all together, that would be the access rate; is that

A it would be for South Dakota network. LECA, Commission order, is allowed to have unequal originating and terminating switched access rates. This exhibit shows is if the rate were equal, well, it's no longer Dakota Co-op. Dakota, is shown on the exhibit as DCT, also has unequal originating and terminating. So you can't just add across for those. There are local exchange companies listed from Baltic down through Western are member companies, so they are -- their switched rate is the LECA rate. They do not have -- they charge the rate that is shown on this piece of

Q Okay. So what you're telling me is that this and the information it contains really isn't comparable to U S West situation, is it?

A I don't -- all I did was answer the questions forth at the top by U S West.

MR. GERDES: Okay. Thank you.

MR. HOSECK: Excuse me, Mr. Gerdes, does this conclude your part of the offer of proof?

MR. GERDES: Yes, it does.

Q If I understand it correctly, Commission was given permission to retain outside



consultants to assist in this review of U S West  
 order, is that correct?

A. That's what it says in the order, yes.

Q. And that was not done; is that correct?

A. Outside consultants was not retained, that's

all.

Q. Now, it is true, is it not, that the cost  
 bases that the Commission currently has are based on a  
 fully distributed cost methodology?

A. Yes.

Q. And it's also true, is it not, that the 1996  
 Federal Act contemplates a forward-looking costing  
 methodology?

MS. CREMER: I would object as to the  
 relevancy of that.

MR. HOSECK: Do you have a response, Mr.  
 Gerdes?

MR. GERDES: We're talking about carrier  
 common line charges, which I understand relate to local  
 service.

MR. HOSECK: The objection will be  
 overruled.

A. My understanding of the Federal Act is that  
 it applies to interstate, not intrastate for switched  
 calls.

Q But in terms of costs of local service, does  
it contemplate a forward-looking cost methodology?

A I thought this docket was on switched access.  
I'm not sure what you mean by --

MR. HEASTON: I'm going to object. You're  
best to interpret the '96 Act.

MR. GERDES: If he doesn't know, he can tell

MR. HEASTON: It's still a question of law.  
The court ought to rule on that whether he knows or  
he's not a lawyer, and his opinion is -- his  
speculation carries no weight.

MR. HOSECK: Would you read the question  
please?

(The question was read by the Court  
Reporter.)

MR. HOSECK: I'll sustain the objection.

Q Do you understand what the term  
forward-looking costs mean as compared to fully  
distributed costs?

A In that fully embedded or distributed is just  
what it is, it's -- you look at the history as opposed  
to looking into the future.

Q And forward looking costs do what?

A Forward looking costs look into the future.

Q So that just so the record is clear, that's a  
different methodology in terms of computing costs, is  
that right?

A Dramatically different.

Q And the rules that we are using in this  
proceeding and that are contemplated by the cost model  
that you used are based upon a fully distributed cost  
methodology, correct?

A Yes.

Q Did staff consider employing consultants to  
advise them on the proper costing methodology to be  
used?

MS. CREMER: I would just want to clarify.  
Have we seen for switched access rules?

MR. GERDES: That's correct in this docket  
going back to my question about employing consultants.

A You said the proper cost?

Q Yes. What should be the costing methodology  
used in this day and age?

A No, we did not get into how the present  
representative Rules should or shouldn't be changed.

MR. GERDES: That's all I have. Thank you.

MR. HOSECK: AT&T?

CROSS-EXAMINATION

MR. LOVALD:

Q Mr. Best, without asking you to give a legal interpretation, would you agree with me that the proposed access rules of the Commission do contain a provision providing the Commission some discretion on these matters?

A Yes, there is administrative rule. I believe Chapter 27 that references a carrier requesting a waiver.

MR. LOVALD: I would like the same opportunity as Mr. Gerdes in asking a couple questions about Exhibit 154 and having those questions considered as a part of proof as opposed to a part of the main case.

MR. HOSECK: Granted.

Q Mr. Best, you were present during Mr. Culp's testimony; is that correct?

A Yes, I was.

Q And did you hear Mr. Culp indicate that under the current computer model run by U S West that of the proposed access cost determined, about four cents of it was attributable to CCL?

MR. HEASTON: I will object to the question. The only thing I did in my offer of proof was to identify what the document is and to make sure that the witnesses were fully understood. All Mr. Gerdes did was

Q. I am sure he understood how the form worked. We're going beyond that. We're going into the substance of the testimony, and I don't think that's appropriate at this place. It was merely an offer of proof to preserve the record as to what the information I sought was introduced.

MR. HOSECK: Well, my understanding of offers of proof are that there's wide latitude granted in some proper under those circumstances. And so if you have a standing objection to this, you have it in the present. But I'm going to allow Mr. Lovald to proceed under the understanding that this all constitutes an offer of proof on the subject matter contained in Exhibit 154.

MR. HEASTON: I would request a standing objection.

MR. HOSECK: Granted.

Q. I just have one question in that respect, Mr. Heaton. Would you look at the CCL column on Exhibit 154 and tell me if there are a number of companies there that have CCL considerably less than four minutes?

A. You're looking under the last group of columns for CCL?

Q. Yes.

A As by just looking at the document, yes,  
 Q Are there some less than that, would be less than four  
 Q

MR. LOVALD: That's all I have.

MR. HOSECK: TAG Group?

MR. RITER: Thank you.

CROSS-EXAMINATION

MR. RITER:

Q Mr. Best, are you able to tell us the total  
 minutes, the total minutes of use? I think this is on  
 A of your exhibit.

A Total number of minutes shown on there? Do  
 you want me to tell you what that is?

Q Is it 445,597,000?

A For common line access element minutes of  
 use, yes.

Q Yes. And does that include the minutes of  
 use for U S West and for others, AT&T, MCI, the TAG  
 carriers?

A Yes. It also includes minutes of use for  
 Carole and for Express Communications.

Q Are you able to -- or can you divide the  
 number of minutes of use of U S West and compare that  
 with the number of minutes of use of the other  
 carriers?

A Yes, I can do that math.

Q Have you done that before? Is that part of the exhibit?

A No, it's not.

Q Do you know as you sit here today what that separate division is?

A I'd have to go to a separate piece of paper, if you will, to show the break out of the 445 million number, or million minutes of use number.

Q Is that one of the documents that's included as an exhibit, or is that a stand-alone document?

A You have to add a number of data requests, data responses, together to get this number because of the corrections that staff made to the minutes of use. So there's not just a document within the data responses that shows 445 million.

Q Let me ask you a couple more questions relative to that sheet. On the intraLATA revenue requirements, if one were to add the common line amount, the local switching amount, and the common transport amount, those would be the three elements that make up the access charge that we're considering today, are they not?

A Well, it's the total intrastate revenue requirement, not just the intraLATA. It's both the

interLATA and the interLATA.

Q All right. And I appreciate that. What I  
really looking at more than that particular answer  
the columns D, column E, and column G would be the  
three columns we'd look at, would we not, to determine  
the revenue requirements are for the access costs  
we're involved with today?

A Yes.

Q And so would it be fair to say that just  
looking at that quickly, that it would be about 27.1  
million dollars?

A I'll accept that.

Q Then have you seen Mr. Noonan's exhibit or  
his testimony?

A Yes.

Q Prefiled. And did you look at the exhibits  
that he had attached to his prefiled testimony?

A Yes.

Q And did you see in his exhibits a summary of  
separate operations from U S West Communications?

A Can you reference me to it so I can find it  
there?

Q Sure. It's Exhibit G attached to  
Noonan's direct testimony.

A Okay. I have exhibit G of Mr. Noonan's



Q. And if one were to look at income from access

revenues, which of these revenues for year 1995 would be access revenues?

A. On this document it would be the \$12,511,039 network access revenues.

Q. What about the long distance service revenues?

A. That would be the revenue received, revenue that U S West gets from their toll products.

Q. And when we looked at exhibit -- or Sheet A from your testimony and we looked at those three elements of common line, local switching, and common transport, we're considering not only other companies, but we're also considering U S West, aren't we, as far as revenue needs?

A. In Sheet A?

Q. Yes, to your knowledge.

A. Attached to my testimony? That becomes the interstate switched access revenue requirement.

Q. But that would include not only the TAG carriers and MCI and AT&T, but also U S West, too, would it not?

A. Right, that includes the U S West minutes.

Q. So then the long distance service income that

Q. The last referenced that is correct, that is U S  
 A. Toll income would be part of the income that's  
 derived from the access rates, so to speak, that U S  
 West interpolates, or I can't look for that  
 technology, that they impose upon themselves, so to  
 speak?

A. No.

Q. Okay. It's not part of what they impute upon  
 themselves?

A. The long distance service product?

Q. Yes.

A. No.

Q. Let's go back a second then. Long distance  
 service, I thought you had said, was part of access income  
 related to U S West.

A. No.

Q. What is it then?

A. The long distance service revenues shown on  
 the balance sheet is the revenue that they get from their toll  
 services.

Q. Okay.

A. It does not include expense or revenue that  
 is that U S West imputes to itself when it does a cost.  
 Now they submit to the Commission a cost allocation  
 study. That cost allocation study includes an

allocation for switched access revenue for the competitive services. Then on the competitive or non-competitive product, that cost allocation study then that study has an imputed switched access revenue. So when you look at this Exhibit G, that does not include any imputed switched access revenue or imputed switched access expense for U S West.

Q. Well, the long distance service revenue shown on Exhibit G, I thought you said some of that related to the toll charges.

A. That is their -- it would be their -- what's shown on MTB message toll service. It would be wide area telecommunication service. It would be private line service. Any of their toll products are included in the long distance service revenues.

Q. And aren't there -- when we look back on Sheet A of your exhibit, aren't those toll service expenses or revenue requirements included on there?

A. Toll expenses? No. This would be for switched access expenses.

Q. Well, let me ask you this question: Can you, looking at Exhibit G on Mr. Noonan's testimony and comparing that with Sheet A on your testimony, can you reconcile the income shown on Exhibit G with the costs or the revenue requirements on your Sheet A?

A No.

Q And that is because why? Why can't you do

A Revenues are not an input or are not  
included in the cost study model.

Q All right. But looking at the revenues, can  
you tell us this revenue comes from that cost that is  
associated? Can you relate them? Can you relate the  
revenues to a cost item even those it's not part of the  
cost study you put together? Can you independently  
use your experience and background tell us how those  
revenue items relate to the particular cost item  
associated?

A On exhibit G? No.

Q And why not?

A Well, the expenses are for the total  
company. They don't say that -- they don't break  
the expense down into, well, this amount is  
associated with local service, this amount is a  
long distance access, this amount is with long distance,  
this amount is with some portion of what's included in  
miscellaneous.

Q But I was looking more at the top level which  
is a revenue side of Exhibit G. And you're saying, are  
you then, that the revenue shown, for instance, the

Q. The expense revenue shown, cannot be related to Sheet A as the revenue required?

A. Not any way that I'm aware of.

Q. Looking at Sheet A of your exhibit there was a column called other and there's 11.5 million dollars of expense or revenue requirement that is attached to the interstate portion of that and only 50,000 to the intrastate portion of that. Is that accurate?

A. No, it's intraLATA and interLATA, not state.

Q. So this is all intrastate revenue requirements. It's just some interLATA, some is intraLATA?

A. Right. It's total state requirement.

Q. But when you look at the access charge, the other column the column entitled other, is not an element in that computation?

A. Not for switched access, no.

Q. Now, I had asked one of the other witnesses about the allocation figures and I looked -- I was looking at Sheet H that's attached to your testimony.

A. Yes.

Q. Are those allocation figures included in the North Dakota rules, or is that FCC rule that makes those allocations?

A. If you were to look at Sheet H on a computer

1        what you would see in -- I'll just pick a  
2        column and pick a row. You would see a formula within  
3        that cell. And that formula then develops the  
4        percentage that is shown here based on the inputs and  
5        on Sheet C, which is the traffic factors allocators  
6        that are put into the study.

7        Q        And that percentage, is that something that  
8        the South Dakota Public Utilities Commission has  
9        adopted or the FCC?

10        A.        Adopted what?

11        Q.        Well, I thought you said you would see on the  
12        computer screen you would see a percentage?

13        A.        Yeah, there would be if you looked at it.

14        Q.        Let's look at line 50, the total big three  
15        expenses.

16        A.        Okay.

17        Q.        Sheet H. It's divided 76 percent goes to  
18        interstate, 24 percent approximately to intrastate. Is  
19        that an allocation that's made under any rules of this  
20        Public Utilities Commission, or are those FCC rules, or  
21        how are they made?

22        A.        It is made in -- the program was developed to  
23        implement the Administrative Rules. Specifically in  
24        this case what we're getting into is 20:10:22, which is  
25        on the federal side, roughly the same as Part 69, which

Q And you assign to switched access. So a specific  
 # # # # # would be they were set up by the FCC  
 # # # # # . The Commission took input from staff for  
 # # # # # and intervenors in, I believe, it was Docket  
 # # # # # 044 which developed the rules, developed the  
 # # # # # Rules, which in turn created the  
 # # # # # cost study.

Q So, in effect, the allocators are included  
 # # # # # the cost study that the Commission has adopted?

A Right, by the way in which you input the  
 # # # # # If you go to the source allocator for the  
 # # # # # is shown as I, 170. You go to Sheet I, line  
 # # # # # and that shows you the big three dollar amounts,  
 # # # # # on Sheet I is strictly the percentage of  
 # # # # # on sheet I of the interstate and other of  
 # # # # # 37 plus million divided by 49 plus  
 # # # # # You do that math and it comes up with a  
 # # # # # that's shown as 76 plus percent.

Q Let me ask just a couple more questions.  
 # # # # # some testimony earlier today regarding a  
 # # # # # in the depreciation computations from lives.  
 # # # # # I think one of the staff members inquired of Mr.  
 # # # # # relative to that. Do you remember that testimony?

A One of the staff members?

Q Yes.

A He's with the Commission?

Q I'm sorry, one of the Commission on behalf of the Commission, he asked a question. I apologize. Did you hear that?

A Yes, I heard that.

Q Are you familiar with the modification that was made?

A Very generally is all. Mr. Rislov would be able to answer your questions on depreciation.

MR. RITER: That's all I'd have.

MR. ROSECK: Cross-examination by Dakota?

CROSS-EXAMINATION

MR. ROSECK: DIRECT:

Q Mr. Best, on Exhibit 154, which Mr. Heaston presented as part of an offer of proof, you, I believe, specifically indicated DCT was a member of LECA. They are not a member of LECA, are they? We are not a member of LECA.

A I believe what I said was that the companies were taken down through Western.

Q Right. In your second statement you said I just wanted to make it clear on the record that you're not testifying that DCT is a member of LECA.

A No, Dakota is not part of LECA.



MR. BEST: All right. Thank you.

MR. HOSECK: Any redirect?

MS. CREMER: Yes, I have a couple.

REDIRECT EXAMINATION

MS. CREMER:

Q. Harlan, I believe Mr. Gerdes asked you about contacts with consultants. Did you attempt to consultants to hire?

A. Yes. I was one of the staff members involved in that endeavor.

Q. And how many consultants did you talk to?

A. I talked to three different consultants.

Q. From three different companies?

A. From three different companies.

Q. Right. And what was the general response of the consultants when you explained to them what it was we needed done?

A. What I did was the respective consultants is I explained to them the language that is in the Commission. Based on that response, the three that I talked to said they would not have time to do that in the short period of short period that the Commission had set up the procedural schedule in this docket. So they -- of them said, well, if you want a report by March, we could possibly start working on it in

And I explained to them that was outside the  
 issues involved. And so our conversation ceased at  
 that point in time.

Q Was staff looking for a particular kind of  
 person in the telecommunications industry?

A Well, we were hoping to get someone that had  
 some experience in I'll use the word auditing  
 that was the -- upon hearing the explanation  
 of the Commission Order, the three that I  
 came back and said, "Well, we don't do  
 that but here might be someone that could help  
 out." I'm not sure what you mean by what  
 type of consultant. It was just a very broad  
 that was made to a number of individuals that  
 listed their -- I won't call it a resume. They  
 keep us in mind if the Commission ever needs to do  
 any type of investigation or special studies or  
 anything like that.

Q Do you recall the names of any of those  
 consulting groups, not specific people, that you talked  
 to -- or unless you do?

A I talked to -- well, it wasn't Lee Sell (sp)  
 personally, but his group. There was an individual  
 from his consulting firm that called me back. I  
 don't recall her name. And I did respond to a couple

\* A few calls that came in upon my return from Omaha  
\* 7:45

\* We were looking for somebody who was  
\* representative of any of the parties at this hearing;  
\* was that correct?

\* Yes. We didn't want any conflict of  
\* interest.

\* MS. CREMER: That's all I have.

\* MR. ROSECK: Questions by Commissioners?

\* CHAIRMAN BURG: I have one based on this last  
\* question. Why did the staff look for outside  
\* assistance in the first place?

\* What we would have is -- I guess it gets down  
\* to the fact that the staff was going to get into the records of  
\* the company. If we were going to get into making any  
\* kind of management types of decisions, we wanted to  
\* have someone that had prior experience in doing audits,  
\* using their expertise on how deeply involved or  
\* how deep the staff should get into different line items  
\* in the cost study.

\* CHAIRMAN BURG: Did the staff feel that given  
\* the direction of the Commission, that there were some  
\* areas where the expertise was lacked probably fulfilling  
\* those requests?

\* Lacked on behalf of the staff?

CHAIRMAN BURG: Yeah. I mean, you know, I'm  
 at what was behind staff considering  
 consultants, or even contacting outside  
 based on the Commission request.

At that one point in time there the word  
 thrown about. Having accounting as my  
 background, I get very -- audit, to me,  
 something very different than doing just an  
 investigation. Audit, you get into a lot more  
 not just looking at the numbers themselves,  
 why is that number what it is? Is it  
 in the -- did they overpay or underpay for  
 something? We did not get into that. And with a CPA  
 an auditing background in telecommunications,  
 we could have relied on his or her expertise as far as  
 from a reasonable item?

CHAIRMAN BURG: What I'm most interested in  
 as you looked for an outside consultant that was  
 that intentions, I presume, were to fill  
 something that you cannot handle totally within. And  
 not being able to do it because of time and scope,  
 did you adjust to fulfill that gap as a staff  
 committee, as the examiners that went to the locations?

I feel that we, between the four of us that  
 down there in July, that we went -- we might have

Q. ... something different than what we looked at.

A. CHAIRMAN BURG: If you had had a consultant?

A. He or she might have sent us off in a different direction than what we felt what we had determined to go in.

A. CHAIRMAN BURG: Do you think that would have been beneficial to have that opportunity?

A. I don't know.

A. CHAIRMAN BURG: That's all I have.

A. COMMISSIONER NELSON: I have a question. I know when we reopened this hearing on this matter, the commissioners were somewhat concerned about the knowledge that the staff might have as to the models. Can you explain to me what you know differently this time than you did last?

A. The start point that I looked at before was this time what the start point was -- ARMIS is a public document readily available, so that's where I started. Upon redirection of the Commission, I then reviewed the '95 general ledger of the company created and service. They don't use just a year-end number. They use a 12-month average number. So you go in, and if you don't -- if you don't take monthly reports that the company has, I went in and created the work sheets personally myself on

I took the beginning of each month, the month for '95. That gives you an average of 12000. You come up with 12 averages. You add and divide it out by 12 to come up with an average that is used in the cost study. Before I just took the number, I didn't get the -- go back in and see the actual general ledger. This time I went to the general ledger and came up with the number that was shown ultimately on the ARMIS report.

COMMISSIONER NELSON: Would the process that you went the second time around, would that identify if there was just some like transposing a number problem or something in this, or would you find that? Or

You're not comparing it to ARMIS. Did we miss any type of --

COMMISSIONER NELSON: I mean would the way you used identify like if there was a possibility of a number or math error?

Yes, we did find within the Sheet G is the electronic. When we got into the support paper work, we did find one that had been picked up incorrectly.

COMMISSIONER NELSON: So is the answer yes? In that we did find, but that wasn't a

Q Or I mean that was more specific to the  
 A It wouldn't -- we didn't find anything  
 Q About the 12 numbers, which is the total  
 A 12 numbers.

Q COMMISSIONER NELSON: But would it identify  
 A Any type of problems if they were there, if they  
 A

A Not that I'm aware of.

Q COMMISSIONER NELSON: So it would not pick up  
 A Anything like that?

A I don't think so.

Q COMMISSIONER NELSON: On page four, line two,  
 A The staff's on-site investigation report, it says  
 A Nothing about no material differences were found.

A Yes.

Q COMMISSIONER NELSON: What do you -- what did  
 A You want consider material difference?

A Well, in this case it was pennies. The only  
 A Difference found was, I believe, it was in the continuing  
 A Records where there was a penny's difference  
 A Appeared to coming out exactly the same when compared  
 A To the general ledger.

Q COMMISSIONER NELSON: Were there different  
 A Levels of materiality depending on the account type, or  
 A Do you use the same standard across the board?

Most of the numbers tracked to the, if not to the penny, they tracked to the dollar. So we didn't -- if the numbers were the same, it justified that the input was the same.

COMMISSIONER NELSON: Thank you.

COMMISSIONER SCHOENFELDER: I have a couple, but I think you've already answered a lot of these. When you were doing this sampling procedures and when you entered the transactions, how many, if any, of those transactions did you verify back to the original source document?

I believe there were two that we ended up entering the actual invoice for.

COMMISSIONER SCHOENFELDER: Only two separate transactions? Or when I think of a transaction -- is the definition of a transaction different than yours?

That would be --

COMMISSIONER SCHOENFELDER: One line item on the ledger?

No. It's even below that. It's one item on the ledger would have, say, 20,000 transactions. What we did is got an itemization of the dollar amount within that account and we might have for 20,000 transactions that might break out into ten different dollar



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

SEP 25 1997

TO THE MATTER OF THE ESTABLISHMENT  
OF RETAINED ACCESS RATES FOR  
SOUTH DAKOTA COMMUNICATIONS, INC.

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

TC96-107

Volume II

Pages 161-320

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

DATE:

September 10 & 11, 1997  
Room LCR #1, Capitol Building  
Pierre, South Dakota

THE COMMISSION:

Jim Burg, Chairman  
Laska Schoenfelder, Commissioner  
Pam Nelson, Commissioner

COMMISSION STAFF:

PRESENT:

Camron Hoseck  
Karen Cremer  
Harlan Best  
Gregory A. Rislov  
Bob Knadle  
Dave Jacobson  
Charlie Bolle

Reported by: Lori J. Grode, RMR

We'd create those 20,000 transactions. We  
 then picked one or two of the dollar amounts, then  
 we might now be down to 5,000 transactions  
 amount. We then went to the next level  
 to find out of those transactions that make  
 that dollar amount, how many -- in effect, we just  
 going further and further into detail for the  
 , and we ended up getting down to actual  
 , which would be one transaction out of the  
 account that might have had 20,000 transactions  
 month.

COMMISSIONER SCHOENFELDER: Are you  
 that this was a sufficient sampling to give  
 picture of the overall validity of the  
 ?

I believe it was.

COMMISSIONER SCHOENFELDER: Okay. And then I  
 on page ten in paragraph four -- and you might  
 covered this but it wasn't directly enough so  
 I worked it up. It's on staff's on-site  
 report it says there's \$1,167,000 of  
 which were not included in the cost study. I  
 have it's necessarily an error. I think it  
 an exclusion. Did you make an adjustment for  
 amount, or was that just left out?

A In U S West's cost study that amount was left out when staff did its cost study, it included not that amount. But the amount associated with the recommendations that staff made.

COMMISSIONER SCHOENFELDER: Do you think U S West left that out inadvertently? Do you have any question about that?

A There is a data response that indicates it was a clerical oversight.

COMMISSIONER SCHOENFELDER: So what if we leave it out, what -- would that lower the access charges?

A It wouldn't lower the minutes.

COMMISSIONER SCHOENFELDER: I don't mean the minutes, I mean the price.

A It would lower the switched access rate by a very slight amount, yes.

COMMISSIONER SCHOENFELDER: Do you know how much of a difference so slightly is?

A Not without running it through the model, no.

COMMISSIONER SCHOENFELDER: Well, sometimes differences so slightly in these dollar amounts are quite a bit so I want to kind of quantify it.

A If I had to guess, I'd say it might make a difference out in the sixth or seventh decimal point.

COMMISSIONER SCHOENFELDER: Thank you.

MR. HOSECK: Harlan, I've got a couple  
 questions of you. On page four and five of your  
 testimony you talk about ethical standards of  
 which U S West subscribes, and apparently  
 something that employees must sign. The first  
 question I have is did you review this ethical  
 standard? Have you read the document?

A We did receive a copy of the document. I did  
 not read the whole thing.

MR. HOSECK: To the best of your knowledge,  
 is there anything in these ethical standards that would  
 prevent an employee of U S West from making a judgment  
 call on an adjustment to inputs in a cost study?

A Say that again now.

MR. HOSECK: Well, what I'm saying is, to the  
 best of your knowledge, and based on what you recall of  
 the ethical standard, is there anything that would  
 prevent an employee of U S West by reason of these  
 standards from making a judgment call on  
 adjustments to inputs to cost studies?

A Adjustments to -- no. That would just be --  
 they'd have to make a decision on whether to include an  
 adjustment or exclude an adjustment.

MR. HOSECK: In other words, does the ethica

specifically address judgment factors that  
of U S West may exercise in the course of  
employment?

MR. HEASTON: Mr. Hoseck, if you would like,  
will provide those ethical standards to you as  
exhibit.

MR. HOSECK: I don't think that's necessary.  
Best can answer these questions to the best  
of his ability. Thank you.

MR. HEASTON: Well, it seems to me that the  
standards themselves are the best evidence of  
the ethical standards are, not Mr. Best's  
testimony. Under the best evidence rule, I'd offer  
those.

MR. HOSECK: If that's an objection, we can  
leave it in the record. But I prefer to have Mr. Best  
answer the question. Thank you.

From what I remember of the standards, the  
business code of -- code of business ethics and  
and compliance program, there is a -- based on  
supervisory level, the individual can make the  
liable for a given level of expense in signing  
and that type of thing.

But as far as U S West's adjustments to the  
policy, I was trying to get that in to coordinate

... what they sign for the code of ethics. And I  
... one for the adjustments to the cost study,  
... think that necessarily coincides with what they  
... when they do the business and ethics conduct.

MR. HOSECK: Well, let me put this another  
... is there anything that prohibits an employee who  
... his ethical standard, to the best of your  
... resolving a matter in his employer's  
... what we might call a gray area, an area  
... for judgment?

A I guess I'm still having a problem following  
... what you're trying to get to.

MR. HOSECK: Is there a correlation?

MS. CREMER: Excuse me, do you have a cite or  
... you want him to look at in that document?

MR. HOSECK: I've referred to page four and  
... of his testimony and that's all that I'm asking.

MS. CREMER: No. I mean in the code is there  
... something there that you want him to look at?

MR. HOSECK: No. It's a general question.  
... the general question is, is there anything in that  
... of conduct, to the best of your knowledge, that  
... an employee of U S West from making a  
... call in a gray area that would resolve the  
... in his employer's favor? It's a hypothetical

in that sense.

MR. HEASTON: I'll object to the question. It's not a hypothetical; and you're referring to a specific document that U S West requires employees to review annually, and comply with. And if we're going to speculate here all over the place as to what's in that document and what it can or can't do, I think that's improper. And, again, I renew my offer to provide to the record a copy of the document as the best evidence of what U S West employees are required to do.

MR. HOSECK: I understand your offer and it's what I'm asking. I'm asking the question of whether or not he's able to answer it. And to whatever his ability is to answer it.

A. I'm not able to answer it based on what was given me.

MR. HOSECK: Okay. No further questions.

Are there any --

COMMISSIONER NELSON: I have one. On page three, paragraph three, of the staff's on-site investigation report, it talks about the Coopers & Lybrand issued an unqualified opinion in 1995. Did Coopers & Lybrand issue a management letter in conjunction with that audit report?

A. Yes. I believe the letter is in one of the

the responses.

COMMISSIONER NELSON: Were there any  
 issues noted in this report? And if there  
 were these issues pertinent to this case?

A I don't recall that they've determined  
 anything as far as management. I don't recall them  
 finding anything as far as management error.

COMMISSIONER NELSON: Thank you.

MR. HOSECK: Do any of these questions prompt  
 any response?

MR. LOW: I have some.

MR. HOSECK: Mr. Low, proceed.

#### RECROSS-EXAMINATION

MR. LOW:

Q Sorry to prolong this, Mr. Best.

Mr. Rislov talks about the consultant selection  
 in his testimony, but since you talked about  
 I guess I better ask you too. You noted that --  
 let me ask you this: You said that the  
 you contacted as for potential hiring were  
 that the Commission maintains?

A I wouldn't -- I don't know if it's a list.  
 I believe Mr. Rislov keeps a file  
 Someone sends in a letter that says, "Keep me  
 if you want to do this or that or some other



Q "Right," and it gets thrown into that file. I believe that's what he keeps in his office.

A Okay. I don't recall if he said how many companies were on that or how many entities were in that area in his testimony.

A I don't recall either. I know I spoke to at least three

Q Okay. Is that the only contacts that you needed as a potential source of consultants?

A I don't know if Mr. Rislov or Mr. Knadle needed to additional companies or not. They would have to speak to that.

Q So I should ask Mr. Rislov that?

A I believe Mr. Rislov would be the correct

Q Should I ask you -- you mentioned that you wanted to -- or staff wanted to avoid the appearance to conflict of interest. Should I ask you about that of Mr. Rislov?

A Probably Mr. Rislov.

Q Did he make that decision, or was that made jointly by all of you?

A I think it was pretty much just a joint decision by the four of us, including staff counsel, and we didn't want to get, for example, the auditor

Q I want to assist staff or one of the auditors for Bell, Sprint, or any of the other parties to assist us.

Q That was one of my questions was what were the criteria used to avoid conflicts?

A When you exclude that, you really limit -- the entire the consultants that could possibly be involved.

Q Okay. So the criteria was whether they previously performed work for any of the parties to this case?

A That was one of them, yes.

Q What were the others?

A It could be -- I thought there were more, but maybe one that I recall is just were they associated with the present parties of this docket.

Q Okay. Well, was one of them that they -- whether the entities had performed work for a Bell operating company?

A I don't know if we got that specific. There was a number of smaller consultants that do work with telecommunications companies, but they don't do anything on the level that we're looking at with U S Bell. So they might have been considered, but they -- I mean if you're dealing with a one or

...green firm, for them to drop everything and assist  
in this endeavor, they just couldn't do it.

Q Okay. That was the other question I was  
going to ask you about. You said in terms you talked  
to three consultants yourself?

A That's what I recall, yes.

Q And the other staff may have talked to some  
others?

A I believe so.

Q And the ones you talked to indicated that  
they felt that they couldn't accomplish the scope of  
the work that you identified for them within the time  
frame of the Commission's procedural order?

A Right, based on the Commission order that I  
sent to each of the consultants, they felt they could  
not do the work in the time frame involved.

Q And in response, I think, to one of the  
Commissioners' questions, tried to explain the  
difference between an audit and what you view this was  
an investigative investigation. In my experience, let me  
summarize that for you and see if you agree with it.  
An audit tends to, in addition to tying back the  
entries to the books and records, tends also to look at  
whether the various transactions have been accounted  
for properly under the accounting rules that are

... because accounting rules are not always perfectly black and white. Is that true?

A Yeah. The audit gets into generally-accepted accounting principles.

Q And that wasn't something you looked at?

A No, we did not get into the GAP at all.

Q Audits also tend to look and see how transactions are booked to make sure they're not booked ~~the double-booked~~ or some other improper -- booked in some other improper way; is that correct?

A I'll take your word for that, yes.

Q And that's not something you looked at in the investigation?

A No.

Q I want to turn to something else. I just ~~wanted to~~ clarify something and I'm not sure it's necessary. But I think in response to Mr. Gerdes's question about the discretion of the Commission for a ~~phase-in~~, you said that the Commission had discretion ~~with regard to~~ a carrier requested phase-in?

A If you go to the Administrative Rule, it's very black and white in the Administrative Rule. That ~~rule speaks~~ speaks for itself.

Q Okay. So if there's no mention of carrier ~~requested~~ in that rule it's --

A I'm going from memory.

Q Okay.

A The rule speaks for itself.

Q Fine. I just wanted to make sure there  
 was any confusion on the record on that. And I  
 wanted if I could get a clarification what you  
 understand the imputation requirements are for U S  
 West. I believe you stated that for noncompetitive  
 services that access revenues are imputed, but for  
 competitive and emerging competitive services access  
 revenues are imputed. Did I misunderstand you?

A In the cost allocation study, it breaks the  
 costs into three -- into the three categories:  
 noncompetitive, emerging competitive and fully  
 competitive. When you get to the total column, the  
 reported revenue equals the imputed expense. So you  
 see when you get to the total company, you don't  
 see the imputed amounts. But when you get to the  
 individual POT's, if you will, for emerging  
 competitive, you would see a number for imputed  
 revenues.

Q Revenues or expenses? In other words, for --  
 take an example. MTS is an emerging competitive  
 service. Is that correct?

A If you look at the noncompetitive part of the

... imputed revenue from the emerging and the  
... competitive. So if you go to the toll, which is  
... merging competitive, you would see an amount for  
... expense. That if you go to the noncompetitive  
... you see imputed revenue.

Q Okay. I think I understand what you're  
saying now. That's because access charges are  
... the noncompetitive and noncompetitive  
... those are revenues that were associated  
... the imputation of the expenses to the toll and  
... and nonemerging competitive?

A Right. Switched access is noncompetitive.  
... is a merging competitive.

MR. LOW: Thank you. That's all the  
... I have.

MR. HOSECK: Any further questions of this  
... ?

MR. CREMER: I just want to clarify  
... Commissioner Schoenfelder, did you want  
... to do the math on that million? He said it  
... change at the sixth or seventh decimal, and did  
... that as a late-filed?

COMMISSIONER SCHOENFELDER: No. I think I'm  
... with that.

MR. CREMER: Okay. Thank you.

MR. NOSECK: There being none, this witness  
 \*\*\* has agreed. Let's take a break for about 15

minutes.

(AT THIS TIME A SHORT RECESS WAS TAKEN.)

MR. NOSECK: Back on the record. It's my  
 understanding that staff wants to recall Harlan for a  
 brief question. And so proceed.

MS. CREMER: Thank you.

FURTHER REDIRECT EXAMINATION

MS. CREMER:

Q Somebody had requested as Exhibit 155 that  
 that put in the number of hours that he has put in

And, Harlan, have you gathered that

information?

A The hours that I pulled started with July 3rd  
 of this year and go through September 9, which was  
 Wednesday, and that totals 324.8 hours.

CHAIRMAN BURG: Question on that: Our fiscal  
 year, of course, starts on July 1. And when you talk  
 this year, there were none on this year before  
 this previous fiscal year?

A What I did, I took the number of hours from  
 the date of the Commission's remand order.

CHAIRMAN BURG: Okay.

MR. NOSECK: Does that prompt any further

from counsel? With that, I think the record reflects that the reserved Exhibit 155 has been admitted through oral testimony and that there will be no need to do any late filing on that. And it's also not impending at this point in time that Mr. Welk has a procedural matter.

MR. WELK: Thank you, Mr. Hearing Officer. I respectfully appeal to the Commission as a whole concerning the Hearing Officer's ruling on the exclusion of Exhibit 154. And I want to -- the Chairman, when we started this hearing today, was clear in his opening remarks that any matter in regard to evidence ruled upon by your Hearing Officer was a preliminary matter and that the Commission retained the ultimate authority to admit or exclude evidence.

And I want to give you just a very short statement why I believe that 154 needs to be admitted. First of all, Judge Zinter directed in his remand order that the Commission determine a fair and reasonable rate that contains the information about the total cost of use, the rates charged by other switched service providers in South Dakota. And, granted, they may have different costs, but the rates they charge the rate payers of South Dakota for the same service that U S is at issue in this case clearly is relevant



to whether the rate U S West proposes to  
is fair and reasonable in South Dakota.

Secondly, I asked at the first hearing  
the hearing October 10th and 11th, 1996, at  
and 114 and 115, are the various switched  
rates by other access providers in South Dakota  
to the information that's on 154? The  
information received that into evidence.

Thirdly, MCI -- and we don't agree with their  
position -- takes the position in this case through  
their brief and their arguments in question today that  
some of the factors set forth in 49-31-1.4 which  
require price regulation need to be considered. And  
some of those factors are whether the price is fair and  
reasonable, the price of alternative services, the  
relevant market for the service, those types of  
services.

Now, 154 clearly contains that type of  
information. It's the overall market. It's the total  
access. It's the minutes in South Dakota by other  
and access providers. It's their prices. Now,  
that evidence was sought to be introduced, MCI  
objected.

So you have put U S West -- if you exclude  
you have denied U S West the right to show you

that the rates are of the same providers in South  
 Carolina, and also you've deprived U S West of putting  
 into the record the evidence on the very factors that  
 we said we should consider. So for that reason I  
 respectfully request you to overrule the Commission the  
 ruling of your counsel and admit 154 and all of the  
 evidence surrounding 154.

CHAIRMAN BURG: I'm going to invite comments  
 from the others as to that request of the Commission.  
 Any other counsel want to make comments?

MR. GERDES: Mr. Chairman, members of the  
 Commission, on behalf of MCI, I don't recall that I  
 referred to this exhibit. The record will speak for  
 itself. But did I? I don't think I did. The point I  
 would make is that this perhaps is relevant evidence,  
 and that also my examination was circumscribed in  
 that I would contend that all of these companies,  
 in that case, their access costs would be more  
 than what U S West is proposing in here. But of course  
 there are differences, as anybody that lives in South  
 Carolina knows, and that is that there are lots more  
 miles of line and fewer customers  
 in that area than for U S West.

But, nonetheless, for the limited purpose  
 that I represent, I have -- MCI has no objection to

of this exhibit.

MR. RITER: Well, for TAG we do object to the testimony. I think the testimony of Mr. Best is that from reviewing this, you still can't tell what the results are and what the access cost is for each of these entities. He said, as I recall -- the testimony he said that, "I put together what was requested of me, but I'm not representing to the Commission today that you can look at Exhibit 154 and determine what the access costs are for these various entities that are shown on there." I don't think it's accurate.

More importantly, I don't think it accurately states what U S West is trying to introduce into the record, and I don't think it supports their argument. I think it's vague and indefinite in that regard. What it's going to do is confuse the record.

MR. LOW: As far as Sprint is concerned, I know that we object to the admission of the testimony. But I would argue that it's not a comparable price for a comparable service or alternative service. Sprint cannot go to these exchanges and get originating or terminating access in these exchanges. It's a different geographic market than U S West's access service. So that would be our

if you do let it in, we'd argue that in our  
And so for that reason we really don't care  
you let it in or not.

CHAIRMAN BURG: Any other comments at all?

MR. MARMET: The only comment Dakota would  
make is I think that need not itself be  
considered by the Commission, but the dockets contain  
this information.

MR. WELK: I'm urging the Commission to  
the dockets themselves rather than the  
And the first request, if you recall, was to  
notice of all of these dockets, which was  
So I would ask as part of the ruling to  
the Hearing Officer's ruling on that matter  
I believe Mr. Marmet is correct that would be  
evidence, all of the dockets and the numbers  
listed here.

CHAIRMAN BURG: Thank you. I'll turn it to  
Commission. Any comments from Commission?

COMMISSIONER NELSON: Well, I guess I'm going  
maintaining the Hearing Officer's ruling  
I believe that the information isn't  
relevant. And what somebody else charges  
the service doesn't necessarily make what you  
charge for the service and your costs and

are different, so I don't think that

And I think that the Commission and Hearing  
are appropriate and should be supported.

COMMISSIONER SCHOENFELDER: I'll support  
Nelson's comments.

CHAIRMAN BURG: I'm going to concur. I think  
probably go either way because we could always  
whatever weight we want to give it. But I do  
are tariffed items already. The  
we set those rates. We know what they  
don't think it's necessary to do that. Plus, I  
any comments can be made in briefs. So with  
we do uphold the decision of the Hearing  
and

MR. WELK: Mr. Chairman, that applies the  
to the tariffs and judicial notice of the  
and Exhibit 154; is that correct?

CHAIRMAN BURG: That's correct.

MR. WELK: Thank you.

CHAIRMAN BURG: That was the intent of the  
and

MR. ROSECK: Staff may call its next witness.

MS. CREMER: Staff would call Loren Hiatt.

MR. LOVALD: I'd object at this point in the  
My understanding is this is staff

... and staff witnesses. If there's an  
 appropriate time to call Mr. Hiatt, I don't think it's  
 the time of the proceeding.

MR. CREMER: Well, I believe I'm allowed to  
 call anyone as I so choose, and I choose to call  
 Loren Hiatt.

MR. NOSECK: The objection will be overruled.  
 Mr. Hiatt will be allowed to call Loren Hiatt.

LOREN HIATT,

called as a witness, being first duly sworn,  
 was examined and testified as follows:

DIRECT EXAMINATION

MR. CREMER:

Q Could you state your name for the record,

A:

A My name is Loren Hiatt. It's L-o-r-e-n

Hiatt.

Q What is your address, business address?

A 55 South 14th Street, Lincoln, Nebraska,

Room 100, 68508.

Q And who do you work for, Mr. Hiatt?

A I work for AT&T.

Q And how long have you been employed by them?

A Seventeen plus years.

Q Have you been involved in this case,

Q When did it start its inception or at any time?

A Yes, periodically off and on.

Q What is your title with AT&T?

A Assistant vice-president law and government

Q

Q What exactly does that mean to the rest of

the

A It means that I'm responsible for all

the legal and regulatory activities between AT&T and

the various federal entities in the states of South Dakota

and

Q So am I right in my assumption that you help

the state of South Dakota, AT&T's policy, within the state of South

the

A Help form? I have input to that process.

Q What is the law and government affairs for a reason.

A The government affairs part, and the law in the law

the Commission in Denver is primarily our guiding source in

the

Q And is South Dakota one of the states that

is assigned to?

A Assigned to me, yes.

Q What other states?

A Nebraska.

Q Have you read any of the Commission orders

Q Has been filed in this case?

A I believe I read the last order that came out of the court appeal.

Q You were aware, weren't you, that the decision -- that this case was remanded to the court and the parties -- various of the parties were ordered to do a number of things?

A Yes, generally. I did not read Judge [redacted] a full bench decision.

Q The bottom line what I'm trying to get at is, Loren, AT&T has been in here from the get-go, pushing and shoving, throwing mud, but they are not here today --

MR. LOVALD: I'm going to object to the comment on this witness. We have no burden whatsoever in this proceeding, and the burden is with U S West to establish that its rates are fair and reasonable. And I don't see the point of staff taking an opportunity to talk to the manager in terms of what we may or may not have done by way of preparation for this proceeding.

MS. CREMER: Had I been allowed to finish the question before the objection was made, I don't believe the objection would be necessary.

MR. HOSECK: I will grant the objection in that as stated, it appears to be argumentative.



Q All right. Let me start again, Mr. Hiatt.  
 A AT&T apparently has decided not to participate in this  
 part of the phase except through cross-examination of  
 their attorney; is that correct?

A That is correct.

Q My question would be why?

MR. LOVALD: Well--

Q if you know, if you know. Maybe that's not  
 part of the decision you make. Maybe that's a legal  
 decision I'm just asking if you know.

MR. LOVALD: I'm going to object on the basis  
 that is calling for confidential attorney-client  
 privilege and information that is never, never allowed  
 to be elicited between either from an attorney or a  
 witness in a proceeding. It's highly inappropriate.  
 The objectionable. And I move to strike the  
 question.

MR. HOSECK: Sustained.

Q Was AT&T aware that they could have done data  
 analysis on U S West in this matter?

MR. LOVALD: I'd object to that question on  
 the basis that it calls for a legal conclusion on the  
 part of Mr. Hiatt. He's not an attorney. He wasn't  
 involved in the legal decisions in terms of running our  
 case in this particular case, and he wouldn't be the

appropriate witness to ask.

MS. CREMER: I don't believe it calls for a legal conclusion as to whether or not Mr. Hiatt read the order and understood that this case was remanded and that the Commission then ordered that it be reopened and parties participate and bring forth certain evidence.

MR. HOSECK: As I recall the question, it goes to what Mr. Hiatt is aware; and in that respect I am going to allow the question to proceed.

A Generally speaking, I'm aware that any case where someone in we can file data requests. That would include this one.

Q Okay. And did you, as far as you know, in this particular phase of the docket did AT&T file any data requests?

MR. LOVALD: The record speaks for itself. Again, I object to the question.

MS. CREMER: I don't believe the record has been developed on this yet.

MR. LOVALD: I'll stipulate we didn't file any data requests since the issuance of the July 3rd order.

MS. CREMER: I believe that an attorney cannot give evidence, and I would prefer this

the witness.

MR. LOVALD: I'm not asking to give

I'm offering to stipulate so we can shorten

MR. HOSECK: What's the objection again,

MR. LOVALD: Go ahead and ask your question.

The answer is no.

And is there a particular reason why?

MR. LOVALD: Again, I'm going to object on the basis that that's calling for confidential client attorney information developed during the course of litigation. Under the Civil Procedure Rules it's not an appropriate question.

MS. CREMER: That's all I wanted to know. If it was an attorney -- if it was developed by the attorney, that's fine. I was curious if it was a policy decision on the part of AT&T to no longer participate in this case. And that's all I was curious about. I don't have anything more.

MR. HOSECK: Does this prompt any further questions of any other counsel from Mr. Hiatt?

MR. HEASTON: If I could.

#### CROSS-EXAMINATION

MR. HEASTON:

Q Just, Mr. Hiatt, were you present at a hearing on a motion by AT&T to dismiss this docket held on January 23rd, 1997, here in Pierre, South Dakota, at the Governor's Inn?

A I can check my datebook, but I think I was there. The record would reveal that.

Q I don't think so unless -- I don't remember testifying.

A I believe I was here.

Q It was a motion hearing which led to the remand order which was appealed.

A Yes.

Q And which is the subject of this remand. Do you know Mr. Glenn Solomon?

A I do know Mr. Glenn Solomon.

Q Do you know what his position is with AT&T?

A He's a consultant with AT&T.

Q Is he an attorney?

A He is an attorney.

Q Did he represent AT&T at that hearing?

A Yes, he did.

Q Do you remember a question being asked by Commissioner Schoenfelder whether AT&T would be willing to provide additional information to supplement the record in this matter? And Mr. Solomon, on pages 1300

... not of that record -- I should say really pages 3:  
 ... of that record indicating that AT&T would  
 ... be willing to supplement the record if this  
 ... were ever re-heard?

A I'm not too sure if your characterization is  
 really right whether or not we were ready at that time  
 to supplement the -- if we were called upon to do so.  
 ... that was the juncture which Mr. Solomon made  
 ...

MR. HEASTON: I would just ask that  
 ... in the transcript from that docket pages 32  
 ... that a part of the record.

MR. HOSECK: I believe that's already a part  
 ... record.

MR. HEASTON: Part of this record, sir.

MR. HOSECK: We can just note that in the  
 ... that those pages are there without necessarily  
 ... another part of the exhibit list, if that's  
 ...

MR. HEASTON: That's agreeable. That's all I  
 ...

MR. HOSECK: Any further questions of this  
 ... If not, you're excused. Staff, call your  
 ...

MS. CREMER: We would call Greg Rislov,

GREGORY A. RISLOV,

called as a witness, being first duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

Q BY THE COURT:

Q Could you please state your name and business address for the record.

A My name is Gregory A. Rislov. My business address is State Capitol Building, Pierre, South Dakota.

Q

Q And what is your current position with the Commission?

A I'm the director of the Fixed Utilities Division of the Public Utilities Commission.

Q How long have you been with the Commission?

A For slightly over twenty-one years.

Q Were you one of the analysts assigned to this matter?

A Yes, I was.

Q And have you reviewed U S West's application and all of the exhibits and prefiled testimony that went with the prefiled testimony?

A Yes.

Q Did you prefile testimony in this docket?

A Yes, I did.

Q In front of you is Exhibit 37. Could you identify that, please?

A Yes. It's a copy of my prefiled testimony.

Q Are there any changes or corrections to that prefiled testimony?

A No.

Q If I were to ask you all of the questions provided in that prefiled testimony, would you give me the same answers?

A Yes, I would.

MS. CREMER: I would move to admit Exhibit

MR. NOSECK: Any objections? If not, exhibit will be admitted.

Q What's the purpose of your testimony today, today?

A Well, I offer recommendations on several cost service issues. And I've tried to address a public interest issue, timing of a phase-in, rate shock, rate option, and then just some general theory about revenue requirements.

Q Okay. Let's begin with the much more mundane part here. Let's start with your recommendations that were made to Mr. Best regarding adjustments to the 1995

Q What study

A Okay.

Q What issues did you analyze and why were those issues picked?

A I think, if I could, maybe a better way to state it was that we analyzed the filing. And from that analysis there was determined that there were certain cost of service issues, and of those issues I was assigned to take four. And those four issues relate to the pension asset, the 1994 federal tax law up, the removal of the reconciliation reserve account -- that's a lot of R's there -- and then returns on equity.

Q Before we begin, can you tell us what test was employed here?

A The test year was calendar year 1995.

Q Did staff accept all of U S West's proposed adjustments?

A No.

Q What adjustments did staff disagree with beginning with the cost of service adjustments?

A Well, those I just mentioned, obviously we disagreed, but the others are contained in Staff Witness Knadle's testimony. You mentioned cost of service adjustments. Those would represent what I



Q Characterize the cost of service adjustments.

Q Then let's start what is the pension asset?

A It involves an accrual related to pension

Q And what had happened is that U S West had  
accumulated. I guess to simplify, more funds in their  
pension account than what their expense dictated they  
needed. They placed that overage into rate base which  
would have provided for a recovery. I eliminated it  
from rate base and therefore from the cost of service.

Q And that was your recommendation to Mr. Best?

A Yes.

Q Okay. What is the 1994 federal tax true-up?

A Well, in short form, it involved a short-term  
adjustment that I believe this Commission has never  
deemed appropriate for inclusion of the cost of  
service, and it just removed that particular short-term  
adjustment from the cost of service.

Q And, again, that was your recommendation to

Mr. Best?

A That's correct.

Q And what was your recommendation with regard  
to the reconciliation reserve reversal?

A In my testimony I characterized it as being  
similar in nature to the 1994 federal tax true-up, and  
my recommendation was the same. That it be eliminated.

Q And as to the return on equity, what was  
your recommendation there and why was that number

12.8?

A I go to greater lengths in my testimony and  
the testimony that was filed a year ago which has been  
removed from the record. But, in essence,  
what we had done is relied upon testimony and  
recommendations that were part of another staff  
member's recommendation to this Commission. In  
addition, we've looked at some factors including just  
the prime rate in the past year, and what we've seen  
that the prime rate has actually increased. There's  
some other factors, but essentially I reached the  
conclusion that 11.5 would still be reasonable as an  
equity return.

Q Do you know what return on equity U S West  
requested?

A Well, in the former case it was 12.8.

Q Is that the same in this case too?

A I would have to look at it. It was 12.8 in  
the former case.

Q Did you participate in an on-site  
investigation regarding this docket?

A Yes, I did.

Q And when was that?

A Well, the actual on-site visit was July 21  
through July 25th.

Q And when Mr. Best talked before about going  
back a second time, that didn't include you; is that  
correct?

A No, I didn't make the trip, although I was  
coming back here on dealing with some data needs that  
they were going to have when they got to Omaha.  
Essentially, it didn't work out to have me go.

Q And you said it already, but Omaha is where  
this on-site investigation was conducted, the same one  
that was talked about earlier?

A In U S West's business office in downtown  
Omaha.

Q And I don't know if you recall all the people  
that Harlan said staff met with down there. Did you  
meet with anyone or talk to anyone other than that in  
conducting this on-site investigation?

A I think in truth, Harlan named a couple of  
people that I don't recall meeting when I was there. So  
my list would be the same as his, absent a couple  
names, and I don't recall who they were.

Q Can you summarize for us what you did in  
Omaha? What you did? How you did it? Why you did it?

A Well, the review is essentially detailed in

exhibit, and that includes tests that we all did. In general, I would say that we were -- what we were attempting to do was to review U S West's accounting processes and how the data was incorporated in those processes. And the whole idea was to comply with the Commission's directive on verifying the inputs into the cost study.

Q What sort of things did you do in Omaha?  
 A None of them? Hang out in the sauna?

A No, we didn't. As Harlan mentioned, the idea was to essentially -- and I'm going to characterize it as essentially. But ARMIS was, let's say, not accepted at the last hearing, so the idea was to really take U S West's ledgers as a starting point, a basis for reviewing their inputs. And the idea for us was to use our time efficiently in going as far as we could from that ledger, or in from that ledger, depending on the nature of the reports, to verify that the numbers U S West uses in the inputs that they input into that study are accurate.

Q What did I do specifically? I looked at interest numbers. I looked at depreciation numbers. I looked at management-commissioned audits. There were a number of other things as well.

Q Such as?

A Assisted Harlan in looking at some of the  
separations and traffic factors. Looking at the M-15  
reports. There were a lot of reports, and it was a  
heavy effort.

Q What did you do with the results of your  
investigation?

A Well, Harlan was responsible for the  
investigation. For the work I did, I reported to him  
separate times I had done and whatever I had found or  
discovered.

Q So all of that is contained in the attachment  
to Harlan's exhibit?

A Yeah. Harlan is to be responsible for that.  
\*\*\*

Q Okay. Do you have an opinion as to  
whether or not the switched access rate that staff has  
developed is in the public interest?

A If I could have a second to refer to my  
testimony.

Q At this point I'm curious do you have an  
opinion?

A Well, I pointed out in my testimony I believe  
it is, yes.

Q Okay. And so then you answered my next  
question as to what is your opinion. And your opinion

... that it is in the public interest. And could  
... summarize for us why you believe that the  
... access rate proposed by staff is in the public  
... interest?

A We developed the cost study based upon the  
... rules. I, for one, believe that when those  
... rules were developed, there was input from  
... from all public interest groups. The  
... had a chance to review them. And the  
... behind those rules, that we would establish  
... for switched access that would mirror what it  
... costs to provide that service. We were  
... about spillage into the local service rate.  
... concerned about subsidization coming from the  
... and fully competitive services. This was  
... to corral these costs, so to speak, and give  
... I would call a goal or objective when we  
... those rates.

So, yes, I believe when they were developed  
... were considered to be in the public interest. And  
... date, there have been no changes made to  
... rules. There have been no changes that would  
... dictate that those rules are no longer in the  
... interest.

Q There's been some discussion in the

appearing briefs; and, granted, it hasn't been in the  
last year as to a phase-in of these rates. Could  
what concerns you have from staff's  
perspective of a phase-in?

Well, my concerns relate to the timing of the  
phase-in and the effect of phasing in rates at what I  
would call the tail end of the phase-in period. To  
illustrate, if one presumed that the phase-in period  
would be three years, which is the maximum amount of  
time a company can so call stay out and not file for  
switched access rates; that means that if you  
were to average a rate over that three-year phase-in  
period, it would be lower for what, perhaps a year and  
a half on average, and then it would be higher for the  
remaining year and a half.

In addition, a true phase-in does not require  
a company to absorb revenues. They're allowed to --  
and I think I pointed this out in my testimony -- to  
recover them much as if they were a pension asset.  
They're allowed to recover return and they're allowed  
to recover those revenues on a deferred basis. So what  
you would end up with under those conditions would be a  
rate that would be in a three-year period in this case  
higher than the 6.09 rate being recommended by  
staff. Arguably, it could be in the eight plus range.

Q I pointed out before, I don't want to  
 \* \* \* \* \* that rule. I don't think I'm legally  
 \* \* \* \* \*. and I don't know if it ever has been  
 \* \* \* \* \*. But if the phase-in period were longer,  
 \* \* \* \* \* something -- that's at the discretion of the  
 \* \* \* \* \*. And, you know, perhaps if certain other  
 \* \* \* \* \* were present, a phase-in could be, you  
 \* \* \* \* \*, a viable alternative.

Q Is staff advocating a phase-in, or do we not  
 \* \* \* \* \* position?

A No, we are not advocating a phase-in.

MS. CREMER: I have would have no more  
 \* \* \* \* \*.

MR. HOSECK: Cross-examination? U S West.

MR. WELK: Thank you.

#### CROSS-EXAMINATION

\* \* \* \* \* WELK:

Q Good afternoon, Mr. Rislov.

A Good afternoon.

Q I want to start out with a little bit of some  
 \* \* \* \* \* questions that were asked of Mr. Best. Since  
 \* \* \* \* \* order, or since the prehearing order on July  
 \* \* \* \* \*, how much time have you spent in reviewing the  
 \* \* \* \* \* requests and in the trips and that you did in  
 \* \* \* \* \* yourself for this docket?



A As of my time sheet submitted for the period ending last Friday, 209 hours approximately.

Q And Mr. Best gave us his time. Were there other members of the staff that worked on this on-site investigation and reviewed the various documents that were provided in connection with the data responses?

A Bob Knadle and Tammi Stanghor.

Q Are you aware of how much time each of those individuals expended on reviewing the data requests and going on the trips to Omaha or all of the other work in connection with this docket?

A Well, I think Bob's time would be similar to Tammi. Tammi went on the trip primarily to assist in doing any tests when we were in Omaha to help maximize our efficiency, but since we've come back she has not done a whole lot of work on the docket, if any.

Q Would you estimate her time to be less than a hundred hours?

A Yes.

Q Well, just rough calculations, it sounds to me that Mr. Best, with some time in excess of 300, and Mr. Knadle were in excess of 200, and Tammi around a hundred, that would be, according to my calculations, approximately 1,000 hours.

A Well, that might be a little on the generous

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Q Perhaps 700, 800.

Q What's the number, do you think?

A Well, if Harlan had 300 and Bob and I both

had 100

Q 800?

A Tammi -- I would say 750 and 800 hours.

Q Low 700. We could say not less than 700

hours.

A Sure.

Q And you heard some testimony earlier about

the documents that were produced by U S West, and do

you believe that it is an approximate sum of around

80,000?

A I did not count them. I have no reason to

believe it's not that many.

Q How would you judge this on-site

investigation and data requests in review of U S West

in the docket compared to other dockets in which other

access providers have sought increases in the

fees?

A I'm really not the best person to ask because

I have not been involved in the smaller companies'

access dockets, whereas other staff members

have been, say, for instance, Harlan Best and Charlie

and some other people. But it's certainly my

...understanding that this is a little more rigorous than  
...been done with the smaller companies.

Q Would you say in your opinion as the director  
of fixed utilities, this is the most rigorous  
examination staff has done in a switched access docket?

A I would think that's true.

Q Now, in your testimony, I believe around page  
100, you talked about a two-phase rate. Do you recall  
your testimony?

A Yes, I do.

Q And I believe you called it a two-part rate;  
is that correct?

A Yes.

Q And that discussion, if I recall, was trying  
to show the Commission that on the federal side that  
the access rates do have two parts to the rate; is that  
correct? Fixed charge and a minute of use charge?

A I think that was one reason, yes.

Q Now, are you aware whether the Commission's  
rules would allow under its current -- the way they  
currently exist a two-part rate?

A As I stated in my testimony, I don't know if  
they would allow that.

(EXHIBIT NO. 155 WAS MARKED FOR  
IDENTIFICATION.)

Q Has the Commission ever opened up a docket to  
amending altering the switched access rules?

A Well, yes, they have.

Q I'm handing you what the Court Reporter has  
before you what's been marked as Exhibit 155, which is  
an order in the Commission's Docket TC96-032 dated  
February 11, 1997. Is that a current open docket of  
the Commission?

A I believe so, to the best of my knowledge,  
it is still open.

Q And this was a docket that considered in  
fact, at least the idea of proposed changes to the  
switched access rules that are the subject of this  
hearing, is that correct?

A Well, yes, I assume as it states within the  
docket.

Q Are you aware as the director of fixed  
services whether there's been any action taken by the  
Commission or any other party in Docket 96-032 or any  
other docket to change, modify, alter the switched  
access rules that are the subject of this hearing?

A When you say any action, I don't know. I  
know I'm not working on it at this point.

Q Are you aware of any petition for rule making  
that has been filed by any company to alter, or amend,

Q: ... the switched access rules?

A: I'm not aware of any.

MR. WELK: I'd move the admission of Exhibit

MR. LOW: I thought 155 was reserved.

MR. HOSECK: 155 was reserved and then it was  
 of when Mr. Best put the testimony in through  
 testimony. Is there any objection to the  
 admission of 155?

MR. LOVALD: I object. Unless the Commission  
 to take judicial notice of the entire docket in  
 it's been offered, it's going to make this  
 appear like nobody has done anything. And I  
 there was a request for comments in that docket.  
 there were a number of participants that filed  
 and proposed changes. And I think the record  
 for all concerned if the Commission  
 judicial notice of the entire docket.

MR. WELK: I have no objection to that as

MR. HOSECK: Is there any objection noted on  
 record?

MR. GERDES: MCI would join in Mr. Lovald's

MR. HOSECK: Well, if I'm to understand this

Q Now, will it be the entire docket in 96-032;  
A Yes, correct, Mr. Welk?

MR WELK: That's correct.

MR NOSECK: Okay. It will be admitted.

Q Are you aware whether the Commission has  
admitted a phase-in of any other switched access  
in the state of South Dakota by any other  
company?

A Well, in the previous U S West docket there  
as there appeared to be a phase-in that -- there  
appeared to be a phase-in that was conditioned by a  
agreement which was approved by the Commission.

Q Other than that which is part of the record  
which you've just described, are you aware of any other  
agreement or any other proceeding which the Commission has  
admitted a phase-in of a switched access rate?

A No.

Q Some of your testimony, I believe, addresses  
the ability of the switched access purchaser to pass on  
the costs to the end user; is that correct?

A I don't think -- if you could point  
me specifically, I don't recall getting into that area  
specifically.

Q If you look at the bottom of page 11 and over  
the top of page 12, there was a discussion during

Q Now I'll let you look at that about this  
 statement of Mr. Knadle about the three dollar  
 charge for a residential U S West customer. Do you  
 remember that discussion in your testimony?

A Yes.

Q My question to you is very simple. Do you  
 have any personal knowledge of -- strike that. Do you  
 have any capacity as fixed utilities director to set  
 the rates that U S West charges its end users for its  
 services?

A No.

Q The decision on whether an increase in a  
 service rate will be passed on by the purchaser  
 is a business decision of that switched access  
 customer, is that correct?

A Well, it will be a decision I can't make. I  
 will agree with that.

Q It's a business decision of the purchaser of  
 the switched access whether they will pass any or all  
 of that cost on to their end user; is that correct?

A I expect ultimately, yes, it will be their  
 decision.

Q After the remand by the Circuit Court, are  
 you aware of anyone who requested the Commission model  
 to be run?



A: what point?

Q: After the remand back from the Circuit Court and the data responds and the on-site. I'm asking from what point after the remand from the Circuit Court did they re-run the model -- did U S West or the staff re-run the model that you're aware of?

A: Not that I'm aware of, but that would be a question directed to Harlan Best because he is the one who has the capability of running that model here in South Dakota.

Q: Would you agree with me that substantially all of the other switched access providers in South Dakota currently charge rates higher than what the LECA group recommended in this case?

A: Well, the LECA groups rates, yes, are higher than what the other providers charge and that represents a substantial portion of the switched access providers, so I guess the answer would be yes.

Q: And how many companies do the LECA rate schedule represent?

A: 22, 23. I don't know. I don't know.

Q: Do you know how many switched access providers there are in the state of South Dakota?

A: Somewhere in the 30 range. I do not have an exact count. Harlan keeps track of those statistics.

Q: you know about how many resellers there  
are in the state of South Dakota?

A: Over 200.

MR. WELK: Thank you. I have no more

questions.

MR. HOSECK: Cross-examination by Sprint?

MR. LOW: Yes. Thank you.

CROSS-EXAMINATION

MR. LOW:

Q: Mr. Rislov, you'll be glad to know I'm not  
going to ask you about the cost of service adjustments,  
but I do have some questions in other areas. And you  
were asked by counsel for U S West about your  
position in your prefiled testimony of two-part rate  
and access charges. Am I correct in concluding that  
you would favor the Commission considering changing its  
policy to allow for such a two-part rate if it's not  
allowed under the current rules?

A: I don't think it would be correct to  
express my feelings as favor, but I think it would  
be correct to characterize it saying there are options  
with what I call problems related to  
communications cost of service, and sometimes those  
problems lie in the way rate design is structured.

Q: Okay. Now, let me -- I asked you if you

... have the Commission consideration of the  
... rate

A Well, by that I would take to mean the  
... actually approving a two-part rate. I think  
... should be able to consider virtually any  
...

Q But that's one that you would want them to  
... in particular because since you've discussed it  
... in your testimony?

A I think rate design is one of the major  
... are all here today. So I would favor any  
... Commissioners would have that would aid in  
... decision making.

Q Now, Mr. Welk also asked you about the  
... proceeding to revise or consider revising  
... charges.

A Yes.

Q Do you recall that?

A Yes.

Q Do you have an opinion about whether the  
... should proceed to do that at this point?

A Well, at this point I would like to wrap up  
... with the rules we now have. I would say  
... the docket is completed, then open a rule

... And if the Commissioners and the parties and

and all the participants feel there needs to be  
some sort of revision to the switched access rules, I  
think yes, indeed we should.

Q Well, they already have opened a proceeding.

A But right now we're in the midst of this  
process. It's tough timing to say right now start  
revising those rules.

Q On page five of your testimony you mention  
the fact that the Telecommunications Act of 1996 has  
changed the market in the way we view costs. That's on  
starting line 12.

A Well, I don't know there's a question there,  
but I think you really have to read the answers on  
lines 14 through 16 to really get a sense of that  
question.

Q Well, I understand but I was just directing  
your attention.

A Sure.

Q My question is wouldn't you agree that the  
Commission needs to revise its access charge rules in  
light of the consequences of the passage of the Federal  
Act?

MS. CREMER: I'm just going to object to  
I'm not sure of the relevancy of changing the  
Right now we're talking about switched access

... we have before us and there is a docket  
 ... Sprint would like to, and they may have even  
 ... previously in that docket, but at this  
 ... not sure of the relevance of this line of  
 ...

MR. HOSECK: The objection is to relevance?

MR. LOW: May I respond?

MR. HOSECK: Yes.

MR. LOW: The Commission in its prehearing  
 ... for this phase of this proceeding asked whether  
 ... proposed rates were in the public  
 ... It's Sprint's position that it's not in the  
 ... interest for, among other reasons, the fact that  
 ... charges as calculated under the current  
 ... rules are simply not viable under the  
 ... Telecommunications Act and they need to be  
 ... and that should be done as quickly as  
 ... And until that's done, it's not in the  
 ... interest for U S West to double its access  
 ... only to have them reduced hopefully as soon as  
 ... Commission can revise its rules.

MS. CREMER: I guess I have an objection to  
 ... attempting to testify in giving his  
 ... We seem to have a lot of that, not just from  
 ...

MR. LOW: I was just simply stating our argument that why this is relevant.

MR. HOSECK: Yeah. I think I understand what the objection is, and it's as to the relevancy of the revising of the current rules; and I'm going to sustain the objection.

Q. Let me ask you this: Do you have an opinion about the impact upon the pricing of access charges?

A. As of this point I see very little certainty --

MS. CREMER: I was going to object simply to call for a legal conclusion as to what the Act calls for Mr. Rislov is not an attorney.

MR. HOSECK: Well, he has answered the question so I'm going to let the answer stand.

A. If I could have that read back, I really hadn't finished the answer.

MR. HOSECK: If the witness has not finished the answer, then I will entertain the objection again.

MS. CREMER: Okay. I object again. And don't offer to answer, Greg. That it calls for a legal conclusion as to the Act, and he is not qualified to answer that.

MR. HOSECK: Sustained.

Q. Well, you did testify in your testimony on

page five that the Act has changed the way that the courts are viewed; is that correct?

MS. CREMER: Can we get a cite as to where he says that?

MR. LOW: The question I asked him before, page five, lines 12 and 13. I asked him if that was

Q. You did testify about that the Act?

A. Well, in essence, what it says in my testimony that is a question and I answer it, as a matter of fact, by saying it has not changed our switched access rules as they now exist.

Q. Well, you say the Act has brought about change.

A. I think the Act can bring about change. I think there's a lot of things that may change because of the Act. But for the purpose of that particular question, my answer said that it had not changed switched access rules, well, this Commission's switched access rules.

Q. So are you saying you think the Act has brought about change, but you don't know what the changes are?

A. I think the Act could bring about tremendous changes, but I really don't have an idea that they'll be necessarily what perhaps anyone in this room right

1 now would estimate them to be. There's still a lot of  
2 uncertainty regarding what effect the Act will have.

3 Q. Do you have any responsibility for  
4 implementing the Act before this Commission?

5 A. Well, I guess maybe you would have to exploit  
6 a little further implementing the Act.

7 Q. Well, in terms of understanding what the Act  
8 requires for state Commissions to do.

9 A. Well, I think it's important that everyone at  
10 the Commission do their best to understand what the Act  
11 intends to do to a certain point.

12 Q. Well --

13 A. For instance, I'm not an attorney, so I mean  
14 there are legal implications that will be handled by  
15 other people.

16 Q. Sure. I'm asking simply about the pricing  
17 implications.

18 A. I think eventually, yes, those questions will  
19 have to be answered. But as of this point I don't  
20 think we in South Dakota or what I see even federally  
21 have developed a position on what it will mean for  
22 pricing of switched access for us here. I think that's  
23 under conjunction.

24 Q. So you don't have a view at this point about  
25 the impact of the Act's requirements for the provision



Q. bundled network elements on access charges?

A. There may be a lot of things that will change the way switched access looks under this Act. I will agree to that, and I suspect it will have an effect.

Q. Do you suspect that it would have the effect of reducing access charges or increasing them?

A. I think it may very well reduce it for some and increase it for others.

Q. And based on what factors?

A. When we talk about a market, we're talking about in any state, any jurisdiction, the demographics of that market. If I live eight miles from Buffalo, South Dakota, I'm not -- at least at this point with the current technology will anyone be beating a path to my door to provide service for me. I think regardless of the Act, common sense will dictate there won't be a whole lot of alternatives with the current technology. To say it's going to benefit everyone, I can't agree with that.

Q. Well, I was just asking about the impact on access charges.

A. I think you said lower them for everyone.

Q. Well, I was asking whether it would lower access charges or increase them. Do I take it from your response that you would think that access charges

Q. ... tend to be reduced in the more concentrated or  
+ ... areas?

A. I don't know. It depends upon which way the  
+ ... rules go. If all nontraffic sensitive costs  
+ ... placed on someone other than the toll provider, I  
+ ... guess they probably will be reduced.

Q. I'll leave that area of questioning and just  
+ ... a couple more. On your discussion of phase-in on  
+ ... of your prefiled testimony, and I think you  
+ ... it in your summary, too, you said that a true  
+ ... -- I'm trying to find it here. Line 21, a  
+ ... phase-in does not require a company to forgo  
+ ...

A. That's correct.

Q. Are you basing that on Commission precedent  
+ ... Court precedent in South Dakota?

A. Well, it's not South Dakota necessarily, but  
+ ... nationwide, and especially in the electric industry.

Q. Are you aware of -- are you stating as a  
+ ... general population?

A. I'm saying as a general proposition the  
+ ... Commission does not have authority to enforce a company  
+ ... to forgo its legitimate revenue requirement.

Q. Are you aware of cases where that has not  
+ ... been true, that that phase-in has been accomplished

ordered by commissions without carrying

any.

A. There are cases where phase-ins have been  
 allowed, and I can't name any offhand where there have  
 been a number of factors considered through some sort  
 of consideration that may not have allowed for carrying  
 charges. For instance, U S West proposed phase-in in  
 1991-1992 had no carrying charges and it didn't  
 have a phase-in at that either.

Q. Well, let me ask two questions. First, you  
 say that you do know there are cases where a carrying  
 charge has not been allowed?

A. I'm going to take your word for it. I can't  
 name any.

Q. I can name some in the brief and, in fact, I  
 think I already have. But with regard to the previous  
 application with U S West, and you said before that was  
 a phase-in, did that have a set phase-in schedule? It  
 didn't have a schedule of increases and a termination  
 of the lengths of phase-in it, did it?

A. Apparently not.

Q. It wasn't really a phase-in under the rule,  
 was it?

A. I would leave that to someone else to  
 determine. I know it wasn't phased in so.

Q Still on your discussion of phase-in, your concern there is that if the Commission -- under the Commission's current rules and with your assumption that carrying charges being required, that a three-year phase-in would really not be that beneficial in terms of reducing rate shock?

A I think it would create rate shock.

Q Right. If the Commission were to revise its Commission current rules or to waive the requirements for filing of a cost study every three years, then if I'm sorry, phase-in could be structured that will alleviate that concern; is that correct?

A I don't know if they would to have waive the rules to do it or not. I'm not an attorney, but it may be interpreted that you could phase in over five years under the current rules. I don't know. And I think I stated in my testimony I do not know what that rule allows the Commission to do or not to do.

Q So I was just talking about your concern about if they have to do it every three years, that it would not -- that last year, that deferral charge would increase the rate eventually?

A Well, the magnitude of increase we're looking at in this docket that third year would be a very large amount.

Q Right. So if they eliminated the three-year  
rolling requirement that would address that concern?

A It depends upon the phase-in period again  
that they chose.

Q On page 13, Mr. Rislov, I think staff counsel  
in your summary you stated that you thought that  
the rates resulting from the staff adjusted cost study  
were in the public interest. Is this where in your  
testimony that you're stating that, because I don't  
quite have I found that in other parts of your testimony?

A I believe the Commission rules in and of  
themselves are in the public interest. But I believe  
if you look at the question on page 13, it says the  
rate increase of any type in the public interest and  
that would go beyond the switched access rules to a  
general rate increase or any sort of rate increase in a  
regulated type of noncompetitive atmosphere.

Q Okay. Let me get back to that. But first I  
want to follow up. I guess I couldn't find anywhere in  
your testimony where you said that the rates resulting  
from the staff cost study were in the public interest.  
Is that in your testimony?

A I would have to go back and review, but that  
would be my testimony now. I believe they are in the  
public interest.

Q. Okay. Getting back to that paragraph on page 11. Is this -- I want to make sure I understand the question and answer here. Are you stating here that a rate increase is in the public interest if all these conditions that you list in your answer are true?

A. Yes.

Q. Are you suggesting that they're all true in this current situation that we're addressing today?

A. Given our switched access costing rules, yes.

Q. Well, these access services are not new or improved services, are they?

A. I think U S West has improved their network rather dramatically over the past couple years.

Q. Well --

A. Past several years. I mean when we are talking about new and improved services, we're not just talking about access. We're talking about the delivery of the entire product, the technology from end to end. The type of cost that eventually customers will have to pay if they're going to get that kind of a network or at least up to this point in time that they would have had to pay.

Q. Have you talked to any of U S West access customers to see if they feel they've gotten an improved service?

A I've not talked to access customers, but we've seen a fairly large project undertaken by U S West to improve the reliability of their network.

Q Have you seen any statistics to indicate that their reliability has, in fact, improved for access services?

A No, I haven't.

Q You also say that sales growth is not adequate to observe the increased cost.

A That's correct.

Q I think you stated somewhere else in your testimony that you didn't know what kind of increased demand there might be.

A Well, you've got -- I don't know if that's exactly true. I talk about growth in sales with a margin sufficient to absorb cost increases. I think that was a more accurate representation.

Q So you don't know if that statement or this factor is true --

A No, that was -- I wasn't -- no.

MR. LOW: Okay. Thank you. That's all the questions I have.

MR. HOSECK: MCI?

MR. GERDES: No questions.

MR. HOSECK: AT&T?

CROSS-EXAMINATION

BY MR. LOVALD:

Q. Mr. Rislov, I have a couple of follow-up questions for you on phase-in because I want to be sure I understand what you're saying. Assume that the Commission determines that U S West's costs under the cost study model is five cents a minute, do I understand -- and further assume that the Commission determines that they're going to phase the rate in, phase the cost in over a two-year period, and that year one you're going to move to four cents. Are you saying that in year two the Commission has to give U S West as much --

A. If the Commission is required to allow full cost recovery once a revenue requirement is determined, you cannot force a company to forgo revenues through a phase-in mechanism. It would have to defer anything below the appropriate cost of service for the period of time the rate was below that cost of service. It would then be added on, I presume, in a tail block period, yes. Once a cost of service has been determined -- and I'm not an attorney, but at least it's been my understanding over the years at staff that once you determine the cost of service, the company has a real right to recover that cost of service.



Q So really the key to your testimony is in the if and the if is if the company is allowed to recover the full cost of service. Isn't that the key?

A That's correct.

Q And if 20:10:27:20 doesn't provide for that, does that's probably a legal issue the attorneys are going to have to brief at some point in this proceeding. Would you agree with me?

A Well, I would admit if it would be a legal issue, that's right.

Q And as we sit here today, you can't cite to any precedent here in the state of South Dakota where that has actually happened, can you?

A Where what has actually happened?

Q You've had a phase-in where what wasn't wanted in step one is taken and added at the back end in step two.

A No.

Q On page six, line 17 to 20 of your testimony, you speak of a negative shift from one revenue product, or basically say that if you have a negative shift from one revenue product it's going to have to be borne by a positive shift to another. Do you find where you make that statement?

A Yes.

Q. Are you making that analogy in terms of the U S West access rate increase in this case?

A. In a sense.

Q. So you're basically saying if they don't get the increase in switched access, they're going to have to make it up elsewhere; correct?

A. For a certain level of revenue recovery or a return, yes.

Q. Now, the Commission's switched access rules have been in force since 1991; is that correct?

A. I don't recall the exact date but it's been --

Q. At least that's when the hearing?

A. -- a number of years, a number of years, yeah.

Q. Would you agree with me from 1991 to 1997, actually early 1996, U S West did not, for whatever reason, shift the impact of the three cent rate to any other services?

A. For U S West specifically, I think we're talking about a much shorter period of time than that. I think perhaps early 1994. But subject to check there, our switched access rate has been below in that period of time what the staff cost of service study would indicate, if that answers your question.

Q And, to your knowledge, they didn't increase local service rates during that period of time to make up for what they were "leaving on the table" in estimated access revenue?

A From my knowledge, no.

Q Concerning the policy choices that the Commission might be looking at in the future in terms of how you allocate the cost of the local loop, are you aware of any revenue requirement currently that this staff of this Commission is requiring that the U S West directory publication revenue cover?

MS. CREMER: I would object as to the relevancy.

MR. WELK: Join in the objection of that.

MR. HOSECK: Counsel for AT&T, would you address the relevancy of this?

MR. LOVALD: Well, there's been -- there have been a lot of answers to questions that -- and I think Mr. Rislov even makes a reference in his testimony that the Commission has some choices it has to make in terms of if you're not going to allocate the 25 percent of the local loop under the current rules, it's got to go somewhere. And the point I'm trying to make in the testimony is that there are apparently other sources of revenue that haven't been tapped. And, granted, it's

probably not necessarily relevant to the determination of these costs, but I think it's certainly relevant to the discussion we've been having about where the Commission might ultimately be going in the future in terms of assigning some of the costs. I think Mr. Bishop even makes a discussion that the Commission should consider a subscriber line charge. You know, there are all places that you can part some of the costs. I think it's a fair question.

MR. HOSECK: The objection is overruled.

A What was the question again?

(The question was read by the Court Reporter.)

A I submit that's a very long question. There are a number of issues I think contained within that question. When we talk about a policy matter, I think that's really what you're talking about with U S West Publishing, or if that's what you're getting at, that is an individual cost of service issue that would affect the cost of service for, you know, whatever service issues care to credit it to. And that's what make a policy decision, per se? I don't know. It depends upon its magnitude. It depends upon its materiality.

Q I don't count words, but I think your answer

\*\*\* three times longer than my question.

A I think it's supposed to be that way.

Q On page seven, and I think also page 12, you  
 \*\*\* about the three dollar per month average  
 \*\*\* increase to residential long distance  
 \*\*\* within the state of South Dakota.

A It's mentioned, yes.

Q Now, of the calculation the staff made in  
 \*\*\* of coming up with that number, was that basically  
 \*\*\* an average minutes of use times what the access  
 \*\*\* would be increasing? Is that how he came up with

A Yes.

Q Again, this is a hypothetical question, but  
 \*\*\* and this is one of these "if" questions --  
 \*\*\* is driven from the intrastate long distance  
 \*\*\* as a result of this increase or possibly this  
 \*\*\* coupled with -- I'm going to strike that and  
 \*\*\* over. I'm not doing a very good job with the  
 \*\*\* I'll just leave it like this, Mr. Rislov:  
 \*\*\* operation, for whatever reason, is driven from the  
 \*\*\* Dakota long distance market, can you give us any  
 \*\*\* that the ultimate long-term impact in the  
 \*\*\* Dakota consumer would be only be \$3.00 per month  
 \*\*\* their long distance bill?

MR. WELK: Objection. It calls for speculation and no foundation.

MS. CREMER: That was my objection.

MR. HOSECK: Sustained.

Q Was any calculation made by staff to determine what the effect of the proposed increase would be on South Dakota's small business users of long distance services?

A No. Knowing that with regard to this docket especially the TAG companies' major market are small business customers, we were really well assured that they would give us that information. And it's so hard to go out and make a comparison of business customers because the scope of their activities is so varied and their use design may be so varied, it's difficult to do that with a business customer.

Q I think Mr. Welk asked you, and I think you agreed with him, that any long distance company could set their long distance rates anywhere they wanted to regardless of the cost of switched access. Do you recall being asked that question?

A I think my response was that ultimately it was their decision where it was to be priced. Yes.

Q Does that include U S West?

A I think so.

Q So if these rates are approved, to your knowledge, is there anything that would prohibit them from offering a per minute long distance rate of five cents a minute?

A Well, I really don't have any idea. Again, if you assume it meets the criteria that U S West has, maybe they could give it away free.

Q On page seven of your testimony I think you make some reference to the fact that -- maybe I'm misinterpreting -- this resale competition isn't necessarily good?

A I said that?

Q I guess the answer I'm referring to is the question starting on line nine, "Wouldn't lower access rates promote toll competition which should result in consumer benefits?" Answer, "Lower access rates will promote resale competition. Low access rates will inhibit facilities based competition given the facilities' and products' status quo." Do I get -- I get the impression that that means that resale competition isn't necessarily good for the consumers of the state of South Dakota.

A I think what that means is that the Commission will be making choices that will affect the way the market is structured one way or the other.

There is -- it's not a zero sum game.

Q. Concerning any potential phase-in, as I understand it, U S West initially filed its requests in 1995. Is that correct on this switched access rate?

A. Well, yes.

Q. Using a 1995 test year?

A. Correct.

Q. So if we follow the three-year cycle, they're probably going to come in in 1999 on the basis of a 1995 test year. Would that sound correct?

A. I don't know how the cycle would work considering the delay. One way or another I would leave that to attorneys to sort that out.

Q. It could possibly even be later?

A. I think under the rules you can file every year if you so choose, and I would think people around here would be more than happy to let them stay out three years if they would agree to it.

Q. Concerning the discussion in your testimony about not hiring any consultants, I think one of the points you made was the potential or the appearance of conflict in terms of some of the individuals or firms that you might be using; is that correct?

A. That was one of the criteria used when looking for assistance, yes.



Q Did staff contact AT&T, MCI, U S West. any of the other carriers or companies to determine whether particular entities would be a problem as far as a service is concerned?

A No, we didn't.

Q You indicated apparently there was at least one CPA firm contacted?

A Actually, I didn't make any of the contacts. Karen Greer and Harlan Best made the contacts. I was in that period of time involved with another U S West project, the quality of service docket, including taking a trip to Denver to do some site review. So Karen and Harlan essentially handled the contacts.

Q Are you aware of the identity of the CPA firm?

A I don't know the names of who they've contacted or who they contacted. I know they were making attempts to contact a whole lot of different firms. I also know that it took some time for these people to get back to Karen and Harlan. And I mean there were some issues related to hiring consultants, some of it timing and scope of the service needed.

Q Can you tell me when the last time was that U S West was subjected to a full-blown regulatory procedure in terms of determining its cost of service

Q. Was the local service revenue requirement?

A. Docket 94-121. Would that be what you're asking for?

Q. That was the -- I want to call it rate reducing docket, but the docket that resulted in the stipulation with staff; is that correct?

A. Yes.

Q. Okay. Did the Commission in that, or did staff in that particular proceeding actually hire consultants or go through the, you know, the full rate setting proceeding, or did you -- at what point did you make the stipulation or early on or late on?

A. Well, I really don't know what you mean by rate setting proceeding. But I think we were looking at rates in that docket for over two years.

Q. Including the cost of local service?

A. Well, that was the result of that docket.

MR. LOVALD: I don't have any other

questions.

MR. HOSECK: TAG Group?

MR. RITER: Thank you.

#### CROSS-EXAMINATION

MR. RITER:

Q. Can you hear me, Greg?

A. Just fine.

I was asking Harlan some questions about depreciation, and he indicated you would be the person who would be called to answer those. Is that accurate?

A Yes.

Q And I had asked this morning a question of the cost relative to depreciation after the sale of the exchanges, and he said they had reduced depreciation because of the sale of those exchanges. But did depreciation, is it higher now than it was before the exchanges were sold or lower?

A Well, are you talking about with depreciation or prior to depreciation? Is that what you're -- certainly depreciation increased with depreciation, but I think you would to have go through the cost runs in order to get a like comparison of depreciation before and after.

Q Well, do you know as far as the costs were concerned, once you took out the 55 locations which were sold, whether or not the depreciation -- the total depreciation that was then used in the cost study was less than or more than it was beforehand?

A Everything else being equal, the depreciation would be less.

Q All right. But what if everything else isn't equal? I guess I don't understand.

A Well, I'm saying if the depreciation rate was  
 the first run when they weren't removed, when  
 the changes weren't removed and there had been  
 subsequently adopted higher depreciation rates.

Q I got you now. And when we talk about those  
 the depreciation rates that were adopted, and  
 understand the language, that the lives were  
 shortened So instead of depreciating it over nine  
 years, maybe you could only depreciate it over five.  
 Is that am I correct on that?

A Well, the lives changed. Some were  
 lengthened, some were shortened.

Q But the result, even though some were  
 lengthened and some were shortened, the result was that  
 the depreciation itself for a year was increased, the  
 was that?

A That's correct.

Q Now, when they moved from, let's say, a  
 ten year to a five-year depreciation and the  
 particular product was somewhere in between -- not  
 perfect. maybe location, facility, was somewhere in  
 between. was it seven years or something? How did you  
 make up that lost depreciation? Was it all put into  
 the calendar year or one year? Do you understand my  
 question?

Q But you're saying, no, we didn't do it  
that way?

A Depreciation expense that's reflected in the  
tariff was designed to be representative of an ongoing  
level of depreciation expense.

Q Mr. Rielov, on page 12 of your testimony and  
pages nine through 17, you said in part that you're  
talking about an average U S West residential end user  
with experience an approximate \$3.00 per month

tariff. And a reseller operating primarily in U S  
South Dakota territory would see an approximate  
doubling of access costs and access costs are a very  
significant portion of a reseller's business. Which,  
of course, my client and I agree with. If U S West  
doesn't pass on the increase to end users and they  
haven't amended their tariff intraLATA rate since '94,  
to my knowledge, but the resellers experience 100  
percent increase, which is what this proposes, is this  
a fair and reasonable position to place resellers in  
with the customers that they handle?

A I think your question needs a lot of context  
before it can be answered. You know, I would agree  
generally it's very burdensome on resellers. But,  
again, I would point to the fact that those switched  
tariff rules were developed with what I believe was a

interest in mind. Those switched access rules were an attempt to carve out a certain level of expense related to that service.

Now, again, one has got to make a few assumptions. But if we assume the noncompetitive part of costs are subject for recovery, lowering of one rate of failure to recover the cost from one class of customer will lead to a shift of that cost to some other customer. And the whole point of the switched access rates from my point of view is to be fair.

Now, yes, I understand the effect on certain TAG members. And to the extent you provide intraLATA service and if that's your on product, I understand you're going to have a problem on one hand. On the other hand, I understand that there are what, approximately 200,000 residential customers out there who are very concerned about their problems paying those switched access costs, too, and other costs of service. So I guess my point is you can't look at just the TAG Group or any other group in a vacuum because these things have a way of bringing everyone into the problem.

Q. But back to the question again, if U S West doesn't pass on the increase, and obviously they put not only the TAG members but they put all their

competitors in a price increase, don't they?

A I think U S West is a very large competitor in South Dakota, and I think there are opportunities for U S West if they don't pass increases on to, I guess, offer very low rates compared to their competitors. I think it's a truism what you're saying. I guess I wouldn't disagree with it.

Q And if they don't pass the rate increase on to their customers, then what you're telling us is they may have to increase other costs to their customers to make up for what they've lost on a rate increase, although apparently they haven't done it during these interim years since they believe their rate should have been over six cents?

A When we talk about U S West, we're talking about a company that provides fully emerging and noncompetitive services. If U S West cares to price its fully competitive services in a manner where they lose money, I guess that's an issue that I may be concerned about. But if they attempt to do it with their noncompetitive, fully regulated services, then I guarantee I'm going to be very concerned about it. The whole issue for me is I don't want to see the noncompetitive services subsidizing competitive services.

Q. But wouldn't you agree also, Mr. Rislov, that if this price squeeze occurs where U S West is able to price their product to their customers at an amount less than what they might be charging resellers, that this reduction will ultimately cause a reduction in competition, which the end users in the long run are going to suffer because of a reduction in competition?

MR. WELK: I'm going to object on the grounds that's a toll pricing issue. This is a switched access docket. If we want to raise a complaint about the toll prices, that's another docket. That's frankly irrelevant to the cost issues under the Commission's rules.

MR. HOSECK: Sustained.

Q. Let me ask you another question then, Mr. Rislov. Isn't it true that if U S West is able to offer the same product at a significantly lower cost than its competitors are offering this product, that the competitors are either reduce -- keep their costs low like U S West costs and suffer by perhaps impacting upon their ability to continue to do business, or else they raise their rates which impacts their ability to compete with U S West?

MR. WELK: Objection to the term product. I don't know if it's access service or toll products



1 you're referring to.

2 MR. RITER: Let's refer to access costs.

3 A. If I could, if the focus of your question was  
4 saying that if someone prices below someone else it's  
5 going to impact competition, the answer would be yes.

6 Q. And, ultimately, an impact on competition  
7 impacts the consumers because they have fewer choices  
8 to make in the marketplace?

9 A. As a stand-alone proposition, that may be  
10 true. But, again, I want to mention that there's very  
11 little that's done in this noncompetitive arena that's  
12 in a vacuum. I don't think you can look at one service  
13 alone and reach that sort of judgment.

14 Q. Well, and I think from your prior testimony  
15 that you recognize, as you said, that there are  
16 problems right now with this that could create problems  
17 relative to the cost of service. And that's one of the  
18 reasons you are saying what other options are available  
19 other than this what can the Commission do under its  
20 rules? What should the Commission do in light of  
21 what's happening on the federal level? That this would  
22 create problems, but don't you agree?

23 A. I think there are a whole lot of challenges  
24 facing this Commission with regard to costing of  
25 products and services and the way competition will

1 unfold in South Dakota, yes.

2 Q. And certainly this docket with the increase  
3 desired by U S West is the prime example of one  
4 significant problem that may arise, isn't it?

5 A. As long as I have the Commission-approved  
6 rules -- characterizing it a problem may be your  
7 characterization. But I am following what right now I  
8 believe exists in the public interest.

9 Q. Okay. And it's true isn't it, Mr. Ritter,  
10 that if one didn't have these rules to create this cost  
11 model, that we'd be looking at some of the issues that  
12 we're talking about today, wouldn't we, because they go  
13 to the fairness of the increase, don't they?

14 MR. WELK: Objection. It calls for  
15 speculation. The rules are what the Commission is  
16 bound by. That may be an appropriate question --

17 MR. RITER: That's a legal argument we've  
18 talked about before and not necessarily is the  
19 Commission bound to use this cost study. The question  
20 -- it's a legal question whether that's a ceiling and  
21 whether they can set a rate beyond that or underneath  
22 it rather as far as what's fair and reasonable.

23 MR. WELK: My objection was it calls for  
24 speculation.

25 MR. HOSECK: Overruled.

1 A. As I point out in the bottom of page 12 of  
2 testimony, on the top of page 13, there have been  
3 studies performed. There was a phase-in recommended  
4 and I understand that it wasn't actually invoked  
5 But when we talk about fairness, I think we have to be  
6 very careful of the use of that word. The switched  
7 access cost study in TC93-108 was an amount above what  
8 staff proposed in this case. It was never  
9 implemented. So does fairness mean that you forgo rate  
10 recovery for two years or three years or four years and  
11 then try to go through this model as we have done here  
12 with staff and put in new rate and say because that  
13 rate increase is now unfair? I don't know. Maybe it  
14 been more than fair that that rate wasn't there from  
15 day one. I mean there's a lot of speculation. When  
16 we use the word fairness, it can be beauty is in the eye  
17 of the beholder, I guess, is my point.

18 Q. Looking in a forward view and just saying  
19 that what has occurred in the past is just that, you  
20 have to agree, would you not, that -- and I think you  
21 do in your testimony, that particularly with the South  
22 Dakota based resellers that don't have the ability to  
23 spread this increase amongst a wider segment of the  
24 marketplace, that this would be very detrimental to  
25 them?

A And I think I state on page 12, lines 11 through 13, and I think I state that.

Q I thought you did, too, and I guess I'm repeating it. Now, on page seven when you talk about the \$1.00 a month to the residential customers, I think you made this clear in prior testimony, you're not talking about the business customers because you figured that the TAG people would talk about them. You're just zeroing in on residential customers, correct?

A On what we determine to be an average residential customer.

Q Okay. And not only have you zeroed in on an average residential customer, but you have taken it down to its smallest point as opposed to saying it's going to be a seven million dollar increase. We've taken it down to \$3.00 because we're allocating it amongst all the residential customers in South Dakota.

A We have about this so-called, if I could use your number seven million dollar increases and 100 percent increases. And that I was trying to put it in context in dollars and cents what will the average residential customer feel.

Q And you also say on lines one through three of that answer that you've got on page seven that low

rates, if they're passed on to the end user,  
 promote toll usage. But we're not talking about  
 a new lower access rate. We're talking about an  
 rate that already exists and presumably it's  
 already been passed on to the consumer, hasn't it?

A. I think as a general proposition, the lower  
 rate, if it's passed on to the end user will  
 benefit the end user even more, yeah.

Q. But my point is as we sit today, that lower  
 rate, as you term it, has already been passed on to the  
 consumer, hasn't it? And if we increase it, then it's  
 a question of passing something on, it's a question  
 of passing a lower rate on, it's a question of passing  
 a higher rate on.

A. I'm going to say yes. But, again, subject to  
 the concerns I mentioned before fairness enter, class  
 actions.

Q. And on page four you speak of U S West  
 reacting to inadequate switched access revenue  
 by adding a cost to local service or something else.  
 And Mr. Lovald, I think, asked you sufficient questions  
 about that. But that's -- you're just speculating on  
 that, aren't you? You don't have any evidence that  
 occurred in the past three years when they thought that  
 rates should be higher, even though they stipulated

Q. ... that they made up for that with some increased rate of local service, do you?

A. What I'm talking about here specifically, and maybe it's more recognizable with, let's say, electric and natural gas companies. But when there's a regulated determined cost of service, you enter the rate design system, and naturally when you move it out of one service, you would have to move it into the other if it's going to be recovered.

Q. And what I'm saying is if one considers the noncompetitive services subject to the Commission jurisdiction and cost recovery, if you move it out of one service, it can only be recovered if you put it in another.

Q. Mr. Rislov, one more question. Your testimony talks about your background and it talks about your present position. In addition to your work with the PUC, are you also a quarterback coach for the Pickens Governors?

A. It doesn't look like it right at the moment.

MR. RITER: That's all I have.

MR. HOSECK: Dakota?

MR. MARMET: No questions.

MR. HOSECK: Staff have any redirect?

MS. CREMER: No.

MR. HOSECK: Commissioners?

COMMISSIONER NELSON: I have a couple questions. I was glad he quit because the longer he was here, the more questions I got. I started out with

I guess the first question on page three of your testimony you stated that the scope and timing of the review for U S West was an issue for the CPA's and the statistical experts that you wanted to or considered consulting with. And I wanted to know how you overcame that scope and timing question for our staff.

A. Well, this related to hiring them. And, again, Karen and Harlan did most of the talking. But I think we talked among ourselves to see what our options were. But from my understanding, when you told these people what we were going to try to do and, yes, you've got to be there a week from Monday to start, and this is what the Commission order says, I think these people would have liked to have a little more time to arrange their schedule to do the amount of work that we were contemplating. I mean -- and I think Harlan said that too. Some of these people looked at this as if it were a three or four or five-month job. But more than that, and I think you find it among the attorneys even at the

\* hearing we speak, it's very difficult two weeks from  
\* they agree to take on a five-week project. Most of them  
\* have their schedules already filled out.

\* COMMISSIONER NELSON: I guess my question is  
\* really getting at whether or not it was a scheduling  
\* issue or whether or not it was the scope of work issue  
\* that they felt.

\* A. I think it was a little of both, because when  
\* we told them when it had to be done, when testimony  
\* would have to be filed, you know, that's not a very  
\* long period of time.

\* COMMISSIONER NELSON: Okay. There's been a  
\* lot of talk about phasing in.

\* A. Yes.

\* COMMISSIONER NELSON: And whether or not  
\* there's been done in the past for switched access  
\* is it your testimony that it's never been done?

\* A. If I could, I think the question regarding a  
\* phase-in in South Dakota, I think, was applying to  
\* natural gas and electric rates as well. And if it's  
\* not, I hope someone will correct me. But the phase-in  
\* became very popular in the 1980's, especially in  
\* the electric industry where a lot of nuclear plants  
\* were being put in at higher cost. And when you talk  
\* about that in South Dakota, no, we didn't see those



of phase-ins. There was no phase-in of switched rates. There were no phase-in of electric rates. There were no phase-in of natural gas rates. There were no phase-ins.

COMMISSIONER NELSON: Since I'm new, to my knowledge, did we talk about switched access when we talked about gas and other things? I thought it was only a telecommunication term. But the question that was asked to you earlier dealt only with switched access rates.

A. I assumed it dealt with everything because in a regulatory sense, a phase-in can apply to electric, natural gas, or telephone.

COMMISSIONER NELSON: Yes, sir. But I guess from the record I'm interested in whether or not the Commission was dealing with switched access or not. I asked the question, as I heard it in -- and maybe I just changed it around in my own mind -- that we were talking only about switched access and that applies only to telecommunications.

A. And I think I said there never has been a phase-in of switched access.

COMMISSIONER NELSON: Would you agree that that's because -- just because there's never been a phase-in in switched access, that that does not

Q. ...preclude the Commission from doing a  
switched access?

A. I agree.

COMMISSIONER NELSON: Would you also agree  
that sometimes when you say when you were looking at  
a 100 percent increase in cost, that maybe phased in  
-- a phase-in of a rate increase would be a  
way to deal with an extremely rapid increase in one's  
costs?

A. Yes.

COMMISSIONER NELSON: When you talked --  
there was also lots of talk around here about rate  
shocks.

A. Yes.

COMMISSIONER NELSON: Do you feel that the  
staff recommended increase would represent or  
represent rate shock for many of the other providers  
besides U S West?

A. I think it depends upon your usage  
characteristics. For the larger national companies it  
probably won't have the effect that it will for the  
smaller companies doing primarily all their business in  
North Dakota.

COMMISSIONER NELSON: Would you agree that  
there are a large number of smaller providers in the

Q What would -- that it would present that kind of a problem?

A I think it would present a big problem.

COMMISSIONER NELSON: How did the staff deal with the rate shock aspect? They felt it wasn't relevant?

A No. I commented at some length in my testimony. But I think whenever you increase a rate by 100 percent, there's going to be rate shock. But I also commented that the cost of service studies have indicated access rates in this range now for what, three or four years. It's not as if this issue had just come up. And at some point you're either going to adhere to the rules or you're not, I guess. And does that mean if I knew that's where the switched access rates were going four years ago, should I have counted on that now? Should I have realized that cost studies were going to generate something much higher than what I was paying? What I'm saying is I think if anyone accused the Commission was going to follow these rules, they've seen this coming now for a number of years.

COMMISSIONER NELSON: I guess I am not sure that's relevant. But I think it is relevant whether or not you believe that it's rate shock, and I think you testified that you did. And if you do believe it would

Q. rate shock, then I guess I'm asking staff for its position on whether or not, one, did you do anything to support it? You didn't, to my recollection, support putting it in. So am I to assume you just felt we should ignore it?

A. And I said in my testimony I think the Commission has to determine what the phase-in period should be. What I said was I would not recommend a phase-in over a three-year period because in my view that would constitute rate shock.

COMMISSIONER NELSON: So are you saying that's the position -- and I may have not read it correctly. Are you saying --

A. What I said is my understanding of the rule that the Commission has to establish the phase-in period.

COMMISSIONER NELSON: My question, though, is because I read your testimony to believe that you didn't support a phase-in and the staff didn't support a phase-in. Are you telling me the staff does support a phase-in?

A. I think the Commission -- I think staff does support a phase-in over a three-year period, but I also said that depending on the scope of time which has to be determined by the Commission, that a phase-in,

I know, should be considered or can be considered, I mean, I can't sit and tell you that I support or don't support it until I know what variables we're dealing with. And if I know that, then I could give you an answer. How much time, what type of cost involved, all of that.

COMMISSIONER NELSON: I guess I'm trying to get staff's opinion about or recommendation on whether or not we ought to be looking at some kind of a phase-in.

A I think a phase-in makes sense in certain situations. But if you tell me a phase-in is going to lead to rates that are at eight cents or nine cents, I can't say staff would support it. And if there's a catch-up part of a phase-in, that's what's going to happen. You're going to get rates higher than what the cost of service shows.

COMMISSIONER NELSON: Maybe I'm still missing something here, but my understanding of what you said is your testimony was that staff supported a 6.1 percent increase. You agree that it would represent a shock. But now what I'm trying to decide is whether if you think this is going to represent rate shock, you feel that 6.1 is where we need to be. How do we -- how does staff suggest we do something about

rate shock, which is a huge problem if it's not phased in because I didn't get that you supported phasing it in or that was a staff recommendation. And I guess I'm trying you agree that it's rate shock. You want to go to 1 percent. So how do we deal with it?

A I offered a couple alternatives. One is a rate design issue. But I assume that would be rate shock to someone along the line. The way the Commission -- in my testimony, I guess what I point out is that if you're going to deal with it, you're going to have to determine first what the Commission can or can't do on a phase-in. What period of time could you phase in? Does there have to be cost recovery of that deferred balance? I think those all play a role. For me to sit here and say that I have an answer to it, I don't. But if the Commission could give us guidance on what we could or do not do, then I think we could work on it. But right now I don't think we have enough to work with on a phase-in under the current rules to give you an answer.

COMMISSIONER NELSON: And you don't have a recommendation about what you think that should be?

A Well, I guess if the Commission would give me some bounds, I could certainly sit down and try to develop one.

COMMISSIONER NELSON: But so far you haven't, as I could assume that you said we're going to 6.1 percent there's going to be a rate shock but you don't have any recommendation as to what we should do about it.

A What we've done is follow the Commission's rules at this point. And if we're going to deviate from it, I think it's imperative that we get direction from the Commission to deviate.

COMMISSIONER NELSON: I guess given the rules that you have to operate under, what might we do about it? I mean does the staff have a recommendation in that regard?

A Well, I think -- and we're looking to the future. But the longer we delay it -- I mean, if you were to say that we should only charge four cents a kilowatt-hour, I could say that, but I don't know if that's legally supported. And I don't know if we have to defer revenue, if that won't lead to further problems down the road. If someone suggested a five or ten-year period it would help mitigate rate shock, I'd say, yes, let's look at it. But let's look at legally what this Commission has to allow this company, if we're going to spread it over that period of time. If we do have to allow cost recovery, if we do, we'll maybe end up with

• a bigger burden to customers and a bigger rate shock.

• COMMISSIONER NELSON: Given the current  
• situation, are you saying that's what we have to do? Do  
• you think we have that option?

• A. What option?

• COMMISSIONER NELSON: The option to phase it  
• in over ten years.

• A. I don't know, Commissioner. And I don't  
• know I don't know if the rules allow you to do that.

• COMMISSIONER NELSON: Okay. You think that's  
• a legal issue?

• A. A legal or Commission-determined. I don't  
• know I can determine it.

• COMMISSIONER NELSON: Okay. There's also  
• been a little talk around here about the rules and  
• whether or not they're in the public interest. And I  
• think you testified that you believe that the rules at  
• the time we passed them were in the public interest.  
• That was somewhere in '93 or '91. '91 maybe. It's  
• now 1997 and we have passed the 1996 Telecommunications  
• Act. Do you feel that the rules -- and I'm granting  
• that you have to live with them for this case. We  
• might have to do that. But do you feel that those  
• rules are necessarily in the changes since 1991 to 1996  
• say not -- would you agree they may not still be in the



public interest?

A Well, I don't know if I agree they were in the public interest when they were adopted, to tell the truth. I mean, I didn't make that determination. But when the Commission approved them, from my purposes as a staff member, they become the public interest. Now, is it time to make a change? I'd say I think we should constantly be researching our rules to see if they're valid. You know, under present conditions. I think attached access rules don't escape that type of scrutiny.

COMMISSIONER NELSON: I guess I'm asking you for your own opinion about whether or not you think these rules are still in the public interest.

A Until someone can show us a better way to do it, yes. I do.

COMMISSIONER NELSON: Okay. Do you think that rate shock is something that the Commission ought to be concerned about?

A Yes.

COMMISSIONER NELSON: Okay. Thank you. That takes care of my questions.

CHAIRMAN BURG: I just have a couple. Once the Commission determined that we were -- it was amended and we were going to re-hear this and we give

the authorization for a consultant, did you see a possibility to getting a consultant at that time? Because you explored it.

A Well, very fundamentally, we knew if we didn't hire a CPA, we would go to hearing with someone who would criticize us for not getting a CPA. And that's exactly the conversation that took place among other circumstances.

CHAIRMAN BURG: And then because of what you said time and scope problems we're not able to get a consultant; correct?

A Well, when I talked about time and scope, we thought someone with experience in that line could make us more efficient.

CHAIRMAN BURG: But you did not find anybody for that because of time and scope; is that correct?

A Well, two of the problems, yes. They didn't have time to adjust their schedules.

CHAIRMAN BURG: My question then given that, did you do anything internally within staff to try to mitigate that, to try to meet what you thought the requests or the considerations were within staff since you did not -- were not able to hire a consultant?

A I think we were confident we could go down and, at least in my mind, do what the Commission wanted.

CHAIRMAN BURG: I guess I'm saying -- part of what I'm asking is did you do things differently than if you would have found -- I'll call, hypothetically, an ideal consultant?

A. Well, I wouldn't know. I wouldn't know what the ideal consultant would do. Commissioner, maybe it would help to explain what we did down there is not the same thing we do in a rate case analysis. It was more of an auditing procedure. It was not the usual we go through any rate case.

CHAIRMAN BURG: Did you do some of the things you would have asked a consultant to do if you had one?

A. No, an auditor, I believe.

CHAIRMAN BURG: That's who you would have needed to have would have been an auditor?

A. Well, there's a difference between a cost procedure analysis and an audit procedure, a big difference. And what we were doing in Omaha was more in line of an audit procedure. It was not an audit, but more in line of an audit procedure than a cost procedure analysis.

CHAIRMAN BURG: So I think the answer is you did adjust to try to do things more like an audit than what you would have if you had an actual auditor to do

A Right.

CHAIRMAN BURG: That's what I was looking

On page seven of your testimony the question was asked, "Won't lower access rates promote toll competition which should result in consumer benefits?" The answer was, "Lower access rates will promote facilities based competition. Lower access rates will inhibit facilities based competition given the facilities and product status quo." Do you think facilities based are preferable to reseller?

A. I think for customer choice, yes.

CHAIRMAN BURG: Why?

A. I would much rather, as a homeowner, have two pipes coming in my house and I get to pick one or the other than just one pipe and I have to use that pipe.

CHAIRMAN BURG: Other than the fact the two pipes makes the price of both go up?

A. The whole premise we're operating under with the Telecommunications Act is competition, and the whole idea is competition will lower that rate.

CHAIRMAN BURG: Do you feel the only way you could have competition is to have more than one facilities based?

A. I think there would have to be alternatives.

\*\*\* However you have one facility, you have a monopoly.

CHAIRMAN BURG: I'm not agreeing, but that's your answer. Thank you.

COMMISSIONER NELSON: Mr. Hearing Officer, I have one more question I forgot. There was some talk, about what others are charging. Would you -- for switched access rates. Would you agree with me that what others charge for switched access rates is not necessarily relevant in this case?

A I would say in terms of our cost study, that's correct, it's not relevant.

COMMISSIONER NELSON: Okay. Thank you.

MR. HOSECK: Greg, I've got a couple questions of you. Would you turn to page 17 of your written testimony.

A Yes.

MR. HOSECK: And I'm going to direct you in a general sense to the question or the response to the question at line ten which talks about the return on equity. Basically what I'm concerned with here is, and the question that I have is to what extent did staff rely upon the Docket TC94-121 in determining the rate of return on equity in this particular docket?

A Well, it wasn't just TC94-121. I mean it was that to take my time and state this as accurately

But TC94-121 did not have a consultant  
 plugging in a rate of return. When I  
 about that consultant, and I discussed this  
 that was not specifically in that TC94-121.  
 So I don't think you can connect this to  
 per se, although, the rate I think is the

MR. HOSECK: So that the fact that it's an  
 percent rate of return on equity is a coincidence?

A No, no, it's not a coincidence.

MR. HOSECK: Well, that's what I'm getting  
 Can you explain to what extent you did rely on  
 TC94-121 in your determination of a rate of  
 on equity in this particular case?

A We relied on TC94-121 as an evidentiary base  
 rate. In the sense you're discussing, I  
 that's accurate.

MR. HOSECK: And then if I'm also to  
 your answer a couple questions ago, you also  
 upon settlements in other cases. Is that a  
 statement?

A No. We relied upon recommendations of the  
 we frequently hired.

MR. HOSECK: But these were ultimately then  
 in settlements in other utility cases?

A I don't know if they were embodied in precedent cases. Ultimately, there have been precedents the last couple years that would reflect the advice we've gotten from that consultant, yes.

MR. HOSECK: So that gets to my next question and maybe you've just answered it, but if you have, please let me know. How long has this 11.5 percent rate of return been used by staff in determining rate of return on equity?

A I think about two years.

MR. HOSECK: Did you do anything in this particular case to update that, or to have any type of a related rate check in use of that?

A I had a sheet. I mean looking at the prime rate alone, which has actually increased since we used that in the past docket. That was one check.

MR. HOSECK: What other checks did you use?

A I don't know. As far as numerical analysis, but knowledge that that Telecommunications Act had been passed since this was originally recommended, just general industry knowledge, and some sense of where we think the risks are going.

MR. HOSECK: I have no further questions. Would you prompt any further redirect?

FURTHER REDIRECT EXAMINATION

Q. OKAY.

A. I just want to clarify one thing.

Q. Commissioner Nelson kept referring to state -- staff's proposed rate as 6.1. And just to clarify, what is the proposed rate? Is it 6.09?

A. 6.09.

Q. Right. I just wanted to clarify that.

MR. LOVALD: I'd like to ask just one or two questions to clarify some information Mr. Rislov gave in response to Commissioner Nelson.

FURTHER RECROSS-EXAMINATION

MR. LOVALD:

Q. I want to revisit phase-in one more time. In terms of the catch-up theory that you have, Mr. Rislov, would you agree with me that when you say if U S West's cost of service is determined under the switched access rules, you would agree with me that the switched access rules determine that cost of service; is that correct?

A. Yes.

Q. And would you also agree with me that ARSD 10.27.20, which is the phase-in section, came in as part of that package of switched access rules?

A. Yes.

Q. That is part of the switched access rules, is that correct?



A Yes. But I think we have to be careful to make a distinction between rules which establish costs and rules which implement the cost or implement the

Q It was one of a number of rules that the Commission adopted as a response to the, I think it was

A I believe that's correct.

MR. LOVALD: No further questions.

MR. HOSECK: Any further questions under any species of cross-examination, or redirect, or anything of that nature?

COMMISSIONER NELSON: I have one more question that just popped up because of Karen's question. I did misspeak when I talked about the recommended rate at 6.1, as I know that it's 6.0. But that brings back in my mind-- it raises a question about earlier when we talked one of the witnesses, I think might have been Harlan, talked about interest differences. You didn't think that there were

And we were only talking pennies. What are we talking about when we have the difference between 6.09 and

A Well, a hundredth of a cent. Are you talking about what type of mistake would lead to that?

COMMISSIONER NELSON: I mean we said earlier when we were going down and reviewing the records we didn't find any material things different and we were only talking pennies. And then I did misspeak when I said 6.09 or one because I really do know that it's 6.09. So what are we -- I mean, are those still pennies too? Would that be materially different?

A. I would warn you that Harlan has a lot better handle on this than I. But I would say if we would have found anything down that there that would change that rate from 6.09 to 6.1, it would have been one heck of a large find to make that kind of difference. That's big, big, big bucks.

COMMISSIONER NELSON: Are we talking about one big, big bucks from 6.1 to 6.09?

A. Yeah. When you compare to what we found down in Ghana, yes. I mean we had nothing. As Harlan testified, it probably only rounded out to a sixth decimal place. Here you're talking third decimal place. That's three times magnitude larger.

COMMISSIONER NELSON: That was what I needed to know. Thank you.

MR. HOSECK: If that concludes all the questioning of this witness, he may be dismissed. It's toward the end of the day. Can we go off the record?

... bit and talk about schedule and things

... 10:15 A.M. 7

(A DISCUSSION WAS HELD OFF THE RECORD.)

MR. HOSECK: Is there anything else we need  
... into under advisement tonight? If not, we'll  
... in adjournment.

(THE PROCEEDINGS CONCLUDED AT 5:30 P.M. AND  
RECONVENED AT 8:30 A.M. THE 11TH.)

MR. HOSECK: We'll go on the record at this  
... There is a matter that I had reserved a ruling  
... and I wanted to do a little research on it, and  
... just as well get that out of the way at this  
... And that was the offer by staff to put Exhibits  
... through 152 into evidence. And the offer was made,  
... ruling was reserved, and the ruling will be that  
... are admitted.

And at this time we're still in the staff's  
... of the case, and so I believe as we finished  
... yesterday, examination of Witness Rislov had finished  
... so staff may call its next witness.

MS. CREMER: Staff would call Bob Knadle.

ROBERT L. KNADLE,

called as a witness, being first duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CREMER:

Q. Would you state your name and business address for the record.

A. Robert L. Knadle, South Dakota Public Utilities Commission, State Capitol Building, Pierre South Dakota, 57501.

Q. What's your current position with the Commission and how long have you been with the Commission?

A. I'm a utility analyst with the Fixed Utilities Division of the Commission. I've been with the Commission since March of 1980.

Q. Were you one of the analysts assigned to this docket?

A. Yes, I was.

Q. And have you reviewed U S West's application, all the prefiled testimony and the exhibits that were with the prefiled testimony?

A. Yes, I have.

Q. Did you prefile testimony in this docket?

A. Yes, I did.

Q. Before you is what's been marked as Exhibit 1. Can you identify that, please?

A. Yes. This is my prefiled testimony in this

ducket.

Q. And do you have any changes or corrections to that prefiled testimony?

A. No, I do not.

Q. If I were to ask you all those the same questions provided in that prefiled testimony, would your answers be the same?

A. Yes, they would.

Q. I would move to admit Exhibit 39.

MR. HOSECK: Any objections? Pam.

COMMISSIONER NELSON: Mr. Hearing Officer, I would move that the following testimony of Robert Balla be stricken from the record and not considered by the Commission on this matter as irrelevant. I guess my rationale is TC93-108, it has no bearing on what is the proper switched access charge here. The cost study in this case stands on its own.

Oh, we're striking page five, line four through 14.

MR. GERDES: Lines what?

COMMISSIONER NELSON: On page five, line four through 14.

MR. HOSECK: Any response?

MS. CREMER: Yes, staff would have a response. It's merely a factual scenario of what

1 occurred in that case. There's no twist on it like  
2 there may have been in other testimony. That would be  
3 my response.

4 MR. HOSECK: Any of the other parties?

5 MR. HEASTON: This is on behalf of U S West  
6 We would object to striking that testimony. As  
7 Commission Counsel, or Staff Counsel has pointed out,  
8 this is merely a statement of fact and these are  
9 questions that have been asked and answered of other  
10 witnesses, I even think by some members of the  
11 Commission concerning what rate was established in the  
12 previous dockets. So I think it's already in evidence  
13 and should be put in evidence in this manner too.

14 CHAIRMAN BURG: I'll second the motion.

15 COMMISSIONER SCHOENFELDER: I'll concur.

16 MR. HOSECK: Proceed.

17 BY MS. CREMER:

18 Q. What's the purpose of your testimony today,  
19 Bob?

20 A. To make recommendations to Staff Counsel  
21 regarding certain of the U S West adjustments to  
22 operating income. And I have also provided some  
23 what-if scenarios in my testimony.

24 Q. Did you also make recommendations to Mr. [unclear]  
25 -- or I guess you gave him your results from the



Q. Was the investigation that you did in Omaha?

A. Yes. I did.

Q. Okay. Let's start with your recommendations on the cost study. What adjustments did you analyze and why were those adjustments? Why were those issues?

A. The adjustments that I have testified on are property tax, the AT&T rebate, the inflation adjustment, wages and employee levels, and the interest



Q What was the effect of that adjustment?

A The effect of the adjustment would be a reduction from the company's proposed adjustment by approximately \$157,000.

Q Okay. Next you said was the AT&T rebate adjustment. Can you tell us about that?

A AT&T provided a volume purchase rebate to the company that was recognized in June of 1995. The company's adjustment purports to remove the portion of the rebate not applicable to the test year. I received some additional data from the company, and the adjustment was calculated incorrectly.

Q And what adjustment did you recommend to Staff Best?

A I recommended to Staff Witness Best to reflect a corrected amount. The effect of that adjustment would be to decrease the revenue requirements from the company's original filing by approximately \$157,000.

Q And then what was your recommendation for adjustment for inflation?

A The company has presented an adjustment that applies basically one-half the percentage increase in the consumer price index to test year operation and expenses not otherwise adjusted. The adjustment is

consistent with court precedent. I reviewed the adjustment and recommended that it be accepted.

Q. What is interest synchronization?

A. Interest synchronization is an iterative process to synchronize the tax deduction for interest on debt with proforma rate base and the rate of return determination.

Q. And what is your recommendation in regard to this adjustment?

A. I recommend that Staff Witness Best incorporate this adjustment into the cost of service. The adjustment should reflect staff's proforma rate base and rate of return recommendation and be calculated in the same manner as was done by U S West.

Q. Then there was an adjustment for wage increases and employee levels. Can you tell us what you reviewed here and what is your recommended adjustment?

A. Yes. The company's adjustment has annualized salary increases during the test year and has also adjusted the test year expense level to include wage and increases granted on May 1st, 1996, for management employees; January 1st, 1996, for occupational employees. The company has also adjusted test year employee levels to reflect the levels as of December

Mar. 1995.

I have reviewed the company's adjustment and these requests that were supplied by the company, and I would recommend that U S West's proposed adjustments for these wage increases and employee levels should be accepted in the cost of service because they are known and measurable changes and such adjustments should match last year costs with related revenues and investment.

Q. As far as you know, did Mr. Best make the adjustments that you recommended?

A. Yes, he did.

Q. Did you participate in an on-site investigation regarding this docket?

A. Yes, I did.

Q. And would that be the same trip that Nielov and Mr. Best have discussed earlier?

A. Yes. I went on both trips that we went down to Omaha, as Mr. Best explained it in his testimony.

Q. Mr. Best named a number of people from U S West that he met with. Did you meet with anybody different than that?

A. Not that I can recall. I did talk to some people in Minneapolis and Denver regarding minutes of the for Dakota and Express, but I can't remember their

\*\*\*\*\*

Q Bob, can you tell us what you specifically  
did in Omaha?

A Yes. I reviewed inside plant and service  
accounts, some expense accounts for September 1995 on a  
sample basis, minutes of use for Dakota Cooperative and  
Dakota Communications per book depreciation expense  
and board minutes and some audit reports.

Q And what did you do with the results of your  
investigation?

A I supplied those to Staff Witness Best, and  
he reported those into his recommendation in this  
report.

Q And that's all contained in that report that  
he attached to his exhibit, or to his prefiled  
testimony?

A That provides a more detailed explanation.

Q Okay. You also ran a couple of different  
scenarios of the switched access cost model, and that's  
at the final couple pages of your testimony. Could you  
explain what you did and why you ran those different  
scenarios?

A Staff Witness Best re-ran the model for those  
three scenarios that I have listed on page six of my  
testimony. The reason for doing so was the Commission

\* interested in a prior hearing how much of the  
\* prescribed depreciation would be worth if that  
\* adjustment was eliminated from the cost of service.  
\* And that's what line 14, letter A, which shows if you  
\* eliminated that adjustment from the cost of service, it  
\* would decrease the rate by .3408 cents per minute.

\* And the second scenario was return on  
\* equity. If you change the return on equity from 11.5  
\* percent to 11 percent, it would decrease staff's  
\* recommended adjustment by .038 cents per minute.

\* And the third one was if you incorporated the  
\* sale of the additional nine exchanges, the rate would  
\* increase by .0162 cents per minute, and that's the sale  
\* of nine exchanges that took place on June 1st, 1997.  
\* These are just what-if scenarios that is re-run in the  
\* Commission's model on staff's recommendation.

\* Q. And that's on page six of your testimony?  
\* You gave a line number but not a page.

\* A. Yes, page six.

\* MS. CREMER: That's all the questions I have.

\* MR. HOSECK: It was offered. The exhibit was  
\* offered and I had not ruled on its admission. It will  
\* be admitted subject to the language that was spoken  
\* Cross-examination by U S West?

\* MR. WELK: Thank you, Mr. Hearing Officer.

CROSS-EXAMINATION

Q. WELK:

Q. Good morning, Mr. Knadle. Did you also review as part of your duties and responsibilities the data responses provided by U S West?

A. Quite a few of those.

Q. Do you have any estimate of the number of hours that you've expended in your trips to Omaha and reviewing the data responses that were provided by U S West?

A. Just on the remand portion?

Q. Yes, since the remand.

A. Yes. I checked on that yesterday. As of last Friday, it was 207 1/2 hours.

Q. Are you aware of any instances where U S West was not cooperative in providing the information?

A. No, I was not.

Q. All of the questions that you asked through the process, were they answered by the appropriate people by U S West?

A. Yes, they were. And if the person I talked to could not answer it, they found somebody that could.

Q. Was there any documents that were refused to you that you asked for?

A. Not that I can recall.

Q Now, I just have one question about your testimony. You provided an example on page five, bottom of page five and the top of page six, regarding a hypothetical about the residential customers for U S West and if U S West passed on the access rate increase to its own customers; is that correct?

A That's correct.

Q Do you have any personal knowledge on how U S West sets its toll prices?

A No, I do not.

Q You have no responsibility whatsoever in setting those toll prices, do you?

A No, I do not.

Q And so whether the toll -- whether if an increase is granted and whether that increase would be passed on to U S West customers is a decision U S West still have to make; is that correct?

A That's correct.

Q And so your example is merely an illustration, but it is pure speculative in nature; is that correct?

A What my analysis would say is if they passed the total cost of this total hundred percent increase on, that would be the maximum effect. It doesn't say if they were going to do it or not.

Q So it's intended to be illustrative, but not saying that's going to happen?

A No. I'm just saying that would be the effect in that scenario.

Q And you have no personal knowledge that if increase occurred, it would be passed on to those consumers, is that correct?

A That's correct.

MR. WELK: I have nothing further.

MR. HOSECK: Cross by Sprint?

MR. LOW: I have no questions. Thank you.

MR. HOSECK: MCI?

#### CROSS-EXAMINATION

BY MR. CERDES:

Q Good morning, Mr. Knadle.

A Good morning.

Q On page seven of your testimony you state that the rate which you arrive at is determined in accordance with current switched access rules which were developed in the public interest; is that correct?

A That's correct.

Q Now, do you agree with prior witnesses that the Commission's job here is to determine a fair and reasonable rate?

A Yes.



Q And do you also agree that the computer model that created this figure is only one part of the question in terms of what this Commission is obligated to consider?

MS. CREMER: I would object. That calls for a legal conclusion on Mr. Knadle's behalf, and he's not an attorney.

MR. GERDES: I'll not asking for a legal opinion. Your Honor. I'm asking him if he's aware of what the Commission's duty is here and what the questions are.

MS. CREMER: And that would involve interpretation of statutes.

MR. HOSECK: Objection overruled.

A. I believe the Commission can consider what they feel they deem is necessary in this matter.

Q. Which goes beyond the cost study or outside cost study. In other words, there are other things they can consider other than the cost study?

A. They can consider whatever they deem appropriate.

MR. GERDES: Thank you. That's all I have.

MR. HOSECK: AT&T?

### CROSS-EXAMINATION

MR. LOVALD:

Q In response to Mr. Welk's questions, I think we indicated that the price increase, or the average residential price increase to the residential customer was estimated to be \$3.00. And that basically is just the average number of lines divided into the total amount of use and the amount of the increase; is that correct?

A. What it would be is the residential MTS minutes divided by the residential access lines divided by 12 to give your average monthly residential.

Q Just, hypothetically, if you're using averages and assuming half the residential customers don't use long distance at all and the other half use the substantial part of the long distance, might that impact break out something to the effect that zero for a whole bunch of people and maybe up to \$6.00 for others?

A. Some are going to be above; some are going to be below.

Q. Your estimate when you say this is the residential impact, assuming that the cost is passed on, that's based upon an assumption that we will continue to have healthy competition in the long distance market; wouldn't that be correct?

A. No. I'm just saying that if they pass it on.

the maximum effect. If they don't pass the full effect on, it's going to be somewhat less.

Q Let me ask it this way: We didn't have a lot of competition in the long distance market fifteen years ago, did we?

MR. WELK: I'm going to object on the grounds it's beyond the scope.

MR. LOVALD: I don't think it is, Mr. Hearing Officer. I think there's some testimony that's been given before the Commission that the maximum impact on the consumer is this, and I think there's an assumption there that bears some testing.

MR. HOSECK: Objection overruled.

A. To my recollection, there wasn't too many companies providing long distance service.

Q. You've lived in Pierre longer than fifteen years. Haven't you, Bob?

A. Yes.

Q. Do you remember getting any long distance calling from any long distance provider fifteen years ago that was the equivalent of 11 or 12 cents a minute for long distance use?

A. I don't make too many long distance calls, so I don't pay that much attention to it.

Q. So your answer is you would have no

knowledge?

A Correct.

MR. LOVALD: I have nothing further.

MR. HOSECK: TAG Group?

MR. RITER: No questions.

MR. HOSECK: Dakota?

MR. MARMET: Dakota has none.

MR. HOSECK: Redirect?

MS. CREMER: No.

MR. HOSECK: Commissioners?

CHAIRMAN BURG: I just have one, kind of clarification. What was the rate of return on equity in 1974, Bob? Did you work with that?

A. Return on equity?

CHAIRMAN BURG: Yes.

A. Staff's was 11.5 percent.

CHAIRMAN BURG: And the overall rate of return then?

A. Let me check here. I believe it was 9.6 something but I can check.

CHAIRMAN BURG: Will you run through for me again where that difference occurs? You know, how the overall rate is 9.7 and the return on equity is 11.5?

A. Sure. The capital structure has two components, I believe. It's long term debt and common

stock equity. What you do is take the weighted cost of  
 the term debt times the cost of the debt, so then you  
 come up with the weighted number. You do the same for  
 common stock equity and basically when you add the two  
 together, you come up with your overall rate of

return. Return on equity is just one portion of that.

CHAIRMAN BURG: Why is the -- so to get a 9.7  
 overall rate of return with 11.5 on return on equity.  
 The other side is -- do you know the level that that's  
 returning then?

A. It's somewhat lower. Just a minute, I'll  
 check here.

CHAIRMAN BURG: And I've always been curious  
 as to why that difference. Why other returns should be  
 less than equity return.

A. Cost of debt is less risky.

CHAIRMAN BURG: Okay.

A. Cost of debt in this calculation was at 7.21  
 percent, and the debt ratio was 44.1 percent, so you  
 have a weighted cost of 3.19. The equity percent of  
 the capital structure is 55.9. And if you apply the 11  
 1/2 percent, as recommended by staff, the weighted cost  
 would be 6.4285 to come up with total cost of rate of  
 return would be 9.61693.

CHAIRMAN BURG: Okay. And what would that

Q What is the cost of debt then?

A The cost of debt is 7.23 percent.

CHAIRMAN BURG: Okay. I just wanted that clarified for my own benefit. I think that's all I

have.

COMMISSIONER NELSON: I have one question. Do you know what the total U S West payroll in South Dakota is?

A Not right off the top of my head, no.

COMMISSIONER NELSON: Can you get it?

A I could try. I might have to do it later if that's all right.

COMMISSIONER NELSON: Do you have it broken down between management and occupational employees?

A Just a minute, I'll check. I believe for 1999 the management salary was approximately 14 million, and occupational was about 21 1/2 million.

COMMISSIONER NELSON: Is this payroll amount in line with South Dakota wages?

A I have not done a study to determine that, so I can't tell you.

COMMISSIONER NELSON: Thank you.

COMMISSIONER SCHOENFELDER: I have a couple. Have you done a lot of outside audits, or not really an audit, but a company review? Since you've

Q With the Commission have you done a bunch of

A

A No, I have not.

COMMISSIONER SCHOENFELDER: Thank you. And because I don't understand it, could I get you to explain interest synchronization adjustment one more time, please, so I could understand it better?

A Okay. Basically what you do is you take the base, you know, staff's proforma rate base, times the weighted cost of debt, which Jim asked about. And then take that figure and you subtract the per book's interest expense, and that difference would be times the income tax rate of 35 percent. And then a deduction for income tax purposes.

COMMISSIONER SCHOENFELDER: Okay. And then did you review in your review any of the externally-generated information at U S West, or only internally-generated information?

A Do you have any specific information?

COMMISSIONER SCHOENFELDER: Well, bank statements, invoices, something that U S West would generate, or else outside of U S West would generate.

A We looked at some auditor's reports. And, as I said, they had their outside auditors.

COMMISSIONER SCHOENFELDER: Some is how many?

A We looked at like, I think, three or four  
years' worth of the outside auditor's reports.

COMMISSIONER SCHOENFELDER: Okay. Thank

MR. HOSECK: Bob, I've got a question  
following up on that of Commissioner Schoenfelder's.  
On page four, line two, of your testimony, on this  
interest synchronization.

A Okay.

MR. HOSECK: You use this word, is it  
iterative?

A Correct.

MR. HOSECK: What does that mean?

A It is what we call three times through. Any  
time you change a number in the cost of service,  
basically what you have to do if you change an expense,  
either change your operating income, you change  
your interest adjustment. Basically what you have to  
do is you keep running it through the system until  
it zeroes itself out. Because the interest  
synchronization will keep changing until you run it  
enough two or three or four times and then it will be  
the number you're going to come up with.

MR. HOSECK: Thank you.

COMMISSIONER SCHOENFELDER: What system? Now



Q Really -- are you talking about the  
computerized?

A It's a computerized system.

COMMISSIONER SCHOENFELDER: What is the  
computer? Is it ours? Is it theirs?

A No, it's ours.

COMMISSIONER SCHOENFELDER: Okay. Thank

you.

MR. HOSECK: Does this prompt any recross?

THE COURT:

MS. CREMER: No redirect.

MR. HOSECK: If not, this witness may be

excused.

MS. CREMER: Staff will rest.

MR. HOSECK: At this time we will take the  
testimony of the intervenors. We really haven't  
submitted any particular order, but I assume that from  
the profiled testimony, that the TAG Group is the group  
that's going to have several witnesses here. So why  
don't we start with your witnesses, Mr. Riter, and go  
ahead and call your first witness.

MR. RITER: Thank you. We'd call W. Thomas  
Simmons.

W. THOMAS SIMMONS,

called as a witness, being first duly sworn.

was examined and testified as follows:

DIRECT EXAMINATION

Q. WITNER.

Q. Good morning.

A. Good morning.

Q. Will you state your name for the Commission,

please.

A. My name is W. Tom Simmons.

Q. And where do you live?

A. I live in Sioux Falls.

Q. What's your occupation?

A. I'm the vice-president, general manager of

W. T. Communications.

Q. How long have you served in that capacity?

A. A little over two years.

Q. Did you offer testimony at the hearing in

October of 1996 relating to the same issues which the

Commission is considering today?

A. I did.

Q. And have you as in -- preparatory to the

hearing today, have you filed prefiled testimony and

unfiled rebuttal testimony?

A. Yes.

Q. Would the prefiled testimony be shown as

Exhibit 13, which is in front of you?

A Yes, it is.

Q And reviewing Exhibit 33, can you identify it as your prefiled testimony?

A Yes, I can.

Q Also looking at Exhibit 42, can you identify that as prefiled rebuttal testimony that you prepared?

A Yes, it is.

Q And going back to 33, if you were asked those questions today under oath, would you give the same answers which you have filed on that Exhibit 33?

A Yes, I would.

Q Do you affirm that testimony which is included in there?

A Yes, I do.

Q Are there any additions or corrections as to Exhibit 33?

A No, I don't believe so.

Q As to Exhibit 42, if you were asked those questions today, would you give those same answers?

A Yes.

Q Do you affirm under oath those answers?

A I do.

Q Are there any additions or corrections to those?

No.

MR. RITER: We would offer Exhibits 33 and

MR. HOSECK: Any objections?

MR. HEASTON: No.

MR. HOSECK: There being none, Exhibits 33 and 42 will be admitted.

Mr. Simmons, I don't necessarily want to go over all of your testimony, but I think it's important to summarize some of the areas that you presented both in Exhibits 33 and 42, and also in the prior testimony before the Commission last October which you've incorporated by reference in your testimony. Tell us just a little bit about Midco so the Commission and myself are more familiar with that company.

Midco Communications is a certified long distance carrier and recently certified local service carrier in South Dakota. We are based in South Dakota, and at this time 100 percent of our customers are also in South Dakota. The vast majority of our customers are small business users. We operate from an office in Sioux Falls with satellite locations in other smaller communities, including Aberdeen and Rapid City and attempt to contact our customers in a one-to-one, face-to-face, person-to-person basis with account

representatives. We visit with our customers. We try to ascertain their telecommunications needs, and we seek to provide solutions for them.

Q Let me interrupt you for a moment. There's been some testimony from other witnesses, I think, about the number of certified resellers in South Dakota. From the perspective -- from your perspective, how does Midco compare with the vast majority of the companies that are merely certified resellers?

A Well, from our experience, there's quite a difference between the number of certified companies and, frankly, the number of companies that are offering service in South Dakota. I have no basis to -- nothing to base that on other than the fact of who we run into when we visit with our customers. Obviously, when we go out and visit with our customers, we ascertain who they're receiving their service from now; and it's a relatively small number of companies.

Q When you say you go out and visit, you don't seem to do this by telephone, your solicitation. You actually go out and confer with small business customers?

A Yes.

Q Why?

A I think that really is our unique selling

competition. If we were just telemarketing our services, we would be basically no different than anybody else. And the pricing scheme that we have on telecommunications services are virtually at the commodity level. There really isn't a great difference in price from one carrier to the next. It really comes down to the service that you're able to offer.

So our strategy is to offer our services like you would offer virtually any other business service. In other words, the sales representative makes a call, sets up an appointment with the customer, arranges to go out, meet face-to-face and talk about a variety of their telecommunications needs. Long distance might be one of them. Paging services may be another, answering services, all those things. Oftentimes we will learn about services that a customer needs that we don't supply, but we will work to help them find someone who can supply those services so, ultimately, the customer is satisfied. If they value the service that we offer, beyond just providing a commodity service, hopefully they'll sign the contract or remain with us for a long period of time.

Q. And do you then, assuming they do sign the contract, attempt to continue to provide the same general services which you've outlined for your small

business customers?

A We do.

Q Preparatory to the hearing today, have you had an opportunity to consider how this proposed increase might impact your business and your customer?

A Of course.

Q Let me ask first, from your perspective, how do you think the proposed increase would impact the small business customers of South Dakota?

A Well, ultimately it would have, I think, a very drastic effect on small business customers because of the impact it would have on us. We would not be in a position to eat the difference in the increase. We simply could not do that. It would put us in a position of either raising the rates to our customers and, again, the customers would have a choice of whether they would be able to choose our service or not. And it, frankly, would be a determining factor whether we could stay in this business or not.

Q Now, in your testimony on page three, particularly, I asked you that question; and you say that if a significant increase is approved, it would force small companies such as ours to either significantly raise rates or reduce services. So is that a possibility, too, that rather than increasing

Q. If one were to keep the rates constant, it would mean that you would have to reduce your services?

A. Reducing services would be probably the first

step. Obviously, going out of business is dire

circumstances. That's the last thing we would choose to do.

I have a hungry family. But in all that, it would be

difficult to reduce those services as well. It would

be forsaking our unique selling proposition, I think.

We would then become a commodity seller. We would have

perhaps make an attempt to telemarket services.

Turning back on our sales team would be a failing, in

my view, because a sales team not only presents

products to customers, but also acts a customer service

representative as well. It may require we would have

to cut back customer service representatives in our

head office, which I think would be detrimental to the

customer.

Q. But, you know, the terminology customer

service representative, does that person in your

operation do more than merely sell your product? I mean

is there actually a benefit added, a value added to

your small business customers by having a customer

representative?

A. Yes. One of the unique selling propositions

that we offer is full analysis of the products that



1 they buy from us. We sit down with customers and show  
2 them what they have been buying, how many lines they  
3 have active. Occasionally we'll come across situations  
4 where a customer may have more lines than they're  
5 actually using, or they may have more lines than they  
6 know they had. They are not experts at analyzing  
7 bills. As you know in your business, I'm sure, that  
8 sometimes the bills can become very confusing. And we  
9 provide that as a service to our customers to be able  
10 to tell them what they're doing and make suggestions on  
11 how they might be able to operate more efficiently.

12 Q. As far as your particular business, if this  
13 proposed rate increase were to occur, what impact do  
14 you see it having on Midco Communications?

15 A. I think the first thing that would happen  
16 with Midco Communications is we would probably test the  
17 feeling of our value added. We'd find out how  
18 available that added value really was because our  
19 options would be to raise the rates. We may, in fact,  
20 have to change our rate structure so that there would  
21 be a different rate for interstate intrastate, which is  
22 clearly not desired by our customers.

23 Q. What is that intra -- tell me that again on  
24 that rate?

25 A. Well, if the costs are more for -- are

1 different for intrastate calls than they are for  
2 interstate calls, and it would, in fact, become more  
3 expense than intrastate calls in order to justify the  
4 increase to a customer. I can't tell them overall that  
5 all of the components of their bill is going up. That  
6 is what's causing it. I mean our customers will ask  
7 us. When we tell them the rates are going up, they're  
8 going to say, "Why?" We get scrutiny from the  
9 competition over a half a penny in a long distance  
10 call.

11 I mean that's how tough the competition  
12 really is. And there are many of our customers that  
13 even if they receive a bid from a competitor of ours,  
14 will come back to us and say, "Why can they offer this  
15 rate when you offer this rate? Why is my rate going  
16 up?" They want to know specifically what component is  
17 going up.

18 Q. From your perspective, does Mideo compete  
19 with U S West toll service?

20 A. I think ultimately we do. We deal more with  
21 the really small business users primarily, so that's a  
22 good share of the calls that our small business users  
23 make are indeed intrastate calls.

24 Q. From your perspective, are the toll charges  
25 that U S West imposes then an issue on your ability to

1 successfully compete if there were a rate increase and  
2 as suggested herein?

3 A. Yeah, it certainly is. My position is all on  
4 this is that I certainly represent my company, but to  
5 some extent I represent the consumer as well, or the  
6 small business customer. Because I'm kind of at the  
7 end of the food chain. I'm out there sitting down one  
8 on one, and I'm having to look into the face of our  
9 customers and explain to them how this works. If you  
10 can imagine going through the day that we went through  
11 yesterday, and I'm sure we'll see today, this is a  
12 complicated issue. It's very difficult to explain that  
13 to Bob's Hardware Store in a 15-minute conversation

14 Q. Mr. Simmons, in your testimony you have  
15 spoken of a proposal that you have relative to access  
16 rate and whether it ought to be increased or  
17 decreased. And I draw your attention particularly to  
18 page three and four of your testimony. Do you have an  
19 opinion, or are you expressing an opinion today to the  
20 Commission that if there is an access rate increase  
21 approved, what would seem like a logical and fair and  
22 reasonable increase?

23 A. I must have written that in a fit of  
24 madness. I guess the reason that it's there is in  
25 previous testimony we were asked very directly, "Do you

1 have an alternative? Do you have a number?" Given the  
2 scrutiny we had on the model, going through yesterday.  
3 I can't for a moment sit before you and say, yes, I  
4 have a brilliant alternative to all of this. I find  
5 all of that mind-boggling, and I have deep respect for  
6 all the people who put it together and can understand  
7 that.

8 The four cents I offered in all of this was a  
9 demonstration that we're moving from an area -- or the  
10 request is to move from an area from approximately 3.14  
11 to a 6.4 level, which according to our numbers, at  
12 least from my company, would be a 108 percent  
13 increase. I have a real hard time explaining 108  
14 percent increase to my business customer. Even at a  
15 change of less than a penny, from 3.14 cents up to 4  
16 cents, that still constitutes an increase of 25  
17 percent.

18 Again, to my small business users who  
19 scrutinize all the increased costs of doing business,  
20 when they see something that hits even a double digit  
21 increase, they will ask the question why. Even less  
22 than a penny increase constituting a 25 percent  
23 increase to them they will ask the question why.

24 Q. So from your perspective, was it at least a  
25 more reasonable alternative that the customers might

Q. To understand a little better than 108 percent increase?

A. That's the only reason it's there. At least the turnaround that I have from our business customers to say is your product selling for more than it was last year?

Q. And if you were in the purely competitive marketplace, purely competitive, none of this emerging competitive or regulated, but a purely competitive marketplace, what would be the reaction of the customers from your perspective to 108 percent increase in a product?

A. They would tell me to take a walk.

Q. Now, in your rebuttal testimony -- and you indicate that you had reviewed Greg Rislov's profiled testimony. Were you also in the room yesterday when he testified on direct examination?

A. Yes.

Q. I want to ask you just a few questions relative to Mr. Rislov. He indicated in his profiled testimony that a reseller operating primarily in South Africa will see a doubling of access rates and that those costs are a very significant portion of the reseller's costs. Do you remember that testimony?

A. I do indeed.

Q. And do you agree with that statement and if so, why?

A. I do.

Q. Why?

A. Well, I, again, do not have the information that the PUC has, certainly, but I guess I can measure it only on behalf of my company. I am a reseller operating in the state of South Dakota, a small reseller that sells a considerable amount of interLATA service. And I know that the impact on our company would be tremendous.

Q. And Mr. Rislov, also in his testimony, and I think Mr. Knadle -- hope I pronounced that right -- did earlier today talked of a three dollar residential customer increase should that rate occur. From your perspective, do you look at it from a residential customer perspective, or is it a broader perspective relative to small business customers as well?

A. Actually I didn't look at it from a broader perspective at all. I looked at it from the perspective of the small business customer. And I was a bit confused when I read Mr. Rislov's testimony because the beginning of that it seems he's talking about business usage and then suddenly we see the impact on a residential tossed in. And, again, \$1.00

itself doesn't seem like a lot of money, but when it comes down to a percentage, it is a lot of money. And for our business users, again, I don't have the apparatus to measure the effects throughout the entire state, although I did ask my staff to take a look at it to check my review of all that. But just looking from across sections of our customers, the report on this would be more in the reigning of 50 to 60 or \$75.00 of an increase.

Q. And when you say 50 to \$75.00, over what period of time?

A. That's a month-by-month.

Q. So looking at the customers of Midco, and perhaps we might call them the average customers, if the increase occurs and if you pass the increase on as opposed to cutting services to them, it's going to mean another 50 to \$75.00 a month?

A. That's what it will be in our look at a cross-section of our customers. That was very significant to me because my customers will not even come back to me and say that's a \$50.00 a month increase. They will come back to me and say that's a \$600 a year increase. Why should I buy your services if it's going to cost me -- if it's going up \$600 a year. And even if a competitor can't offer a better

Q. I will still be the bad guy for bringing a  
 My customers are notorious for shooting the  
 passenger

Q. But if all the other carriers including U S  
 increase their rates by the same amount, then what  
 would the impact be?

A. I'm not sure all the carriers will.

Q. Why don't you think they will?

A. Again, we operate only in the state of South  
 Carolina. We must -- this is our environment. This is  
 all we have. There are other carriers that are  
 national in scope and can take a look at that and tend  
 to equate that over their large network of users. From  
 their standpoint as a business expense, again, as a  
 percentage of a business expense, it's relatively small  
 to them. It is very large to me.

Q. Now, Mr. Rislov suggested in his testimony  
 that an increase could under certain circumstances be  
 in the consumer's best interests. Do you agree with  
 that?

A. I don't think so.

Q. Why don't you think so?

A. Well, I think the idea is that if we keep the  
 cost of doing business relatively low for resellers, we  
 won't have facilities development and customers



...ately won't have as many choices, and the idea of  
 ... is what frankly drives the prices down. I have  
 ... problem with the concept of addressing the cost of  
 ... business to a reseller to force them into  
 ... facilities development. But, again, from my standpoint  
 ... a moot point.

Q Why is that?

A Well, we in our company have already paid the  
 ... to develop facilities in the state. In fact,  
 ... already have facilities in the state. That's a part  
 ... a long discussion, frankly, with another group that  
 ... be presenting their activities for the legislature  
 ... regarding taxation. But even in spite of that, we've  
 ... the decision to develop facilities. In fact, I  
 ... frankly ordered a new switch that will be able to  
 ... our operations rather substantially.

Q So the portion of Mr. Rislov's testimony  
 ... indicated that if you keep access rates low, it  
 ... development in facilities-based competition.  
 ... your perspective is that accurate?

A No, no. I follow the theory. But in the  
 ... application of our plans, it's just not true.

Q Do you believe that the rate of 6.09  
 ... suggested by Harlan Best in his testimony is in the  
 ... public's best interest and why?

A I don't believe it is in the public's best

Q Why not?

A Because it represents such a tremendous  
I think it represents a major impact on  
small business users primarily.

Q And do you think that the 50 to \$75.00 a  
month that you've spoken of would be a rate shock to  
small business customer?

A I do.

Q Mr. Simmons, in preparation for today's  
hearing, did you provide some internal financial  
information to an outside consultant for his review?

A Yes.

Q And just so the record is clear, do you  
swear under oath today that the financial information  
you provided to him relative to Midco Communications is  
accurate information?

A I do.

MR. RITER: That's all I have. Thank you.

MR. HOSECK: Cross-examination, U S West?

MR. HEASTON: Thank you.

CROSS-EXAMINATION

MR. HEASTON:

Q Good morning, Mr. Simmons.

A Good morning, Mr. Heaston.

Q If I understand your testimony correctly, you do not provide long distance services outside the state of South Dakota?

A We do not.

Q And do you provide long distance services throughout the state of South Dakota?

A Yes.

Q Do you purchase switched access from local exchange companies other than U S West?

A Yes.

Q Approximately how many other local exchange companies in South Dakota do you purchase switched access from?

A How many?

Q Yes.

A An easier answer would be how many do we not.

Q I'll take that answer.

A I would say at some given point all of them.

Q So you do purchase from all of them. What would you say is the breakdown between U S West and all the other local exchange carriers of the percentage that you buy from U S West and the percentage you buy from all the others?

A Oh, my, I don't have that information in

Q. ... of me. We may buy from all the others a third or  
... of the amount.

Q. Okay. Have you ever as the general manager  
... the company reviewed the switched access rules which  
... Commission has and which are being applied in this  
... ?

A. Yes.

Q. Have you reviewed the cost model?

A. No.

Q. With regard to the other local exchange  
... to whom you pay switched access, you are  
... that they use the same rules and model to come up  
... their switched access prices?

A. Yes.

Q. Have you ever intervened in any of the  
... that involve the determination of those prices  
... those other companies which provide switched access  
... than U S West?

A. No, I have not personally. If our company  
... in those prior to my two years' tenure, I  
... know that. I have not..

Q. But not in the two years?

A. Right.

Q. And then that two-year period started when?

A. It started in August 1st of '95.

Q Based on your testimony and the lack of intervention in the other dockets, is it your belief that the Commission's rules are basically all right for determining switched access pricing?

MR. RITER: Just a minute. I'm going to object to that question. It's too broad. It's indefinite in scope and form. If we're talking about the rules or the statutes, or like Mr. Gerdes referred about, I don't think it's clear.

MR. HOSECK: Sustained.

Q All the switched access rules which are Chapter 20:10:27 through 20:10:29. Since you have reviewed those rules, do you have -- do I take it, am I allowed to believe that you have no objection to those rules and how those rules operate?

A I guess my concern is if the rules going forward are correct, with all of the information and, again, you know, my two-year history in all of this coming on board, one of the first things I dealt with, basically, was this docket, which we started working on six months after I joined the company. I have been, basically, learning about the impact of switched access rules and the cost models and all of this as we've been going forward.

Of course, the Telephone Communications Act

1 1995 came shortly after my start in all this as  
2 well. And I've had a problem understanding what the  
3 Telecommunications Act is talking about, the components  
4 of the trilogy moving forward, and trying to justify  
5 them with the current switched access rules. So I'm  
6 not sure if I know how to answer the question. I think  
7 there are going to be a lot of changes that are going  
8 to have to be made.

9 Q. Well, in any event, it's fair to say that you  
10 have not proposed on behalf of Midco or TAG any changes  
11 to those rules?

12 A. I have not.

13 Q. So I take it also based on your previous  
14 answer that at least since August of '95 when you  
15 became involved with Midco, you have been aware -- and  
16 you became involved with this docket, that you've been  
17 aware that the application of the rules and the model  
18 prescribed by the Commission produce at least a six  
19 percent cost of service for U S West switched access?

20 A. Yes.

21 Q. Now, you mentioned that you're going to  
22 develop facilities. What kind of facilities are you  
23 going to be developing?

24 A. Well, the first thing that we will develop is  
25 a new switch. The switch will have more capacity than

Q Now, it will have also the ability to have additional components, which may be able to facilitate local operating once we have approval to do that and once we have an agreement to build out a network.

Q Okay. And when you build out this network, is it going to be solely used for long distance

service?

A We don't know.

Q When you cost out this network, are you going to cost it in and then trying to recover the cost of the network are you going to cost it out based on what you call long run incremental cost; that is, what you would have done with the most efficient network looking into the future, or are you going to take a look at what you've actually done and try to recover the cost that you've actually incurred?

A That battle is going on within our corporate right now. The assumption is we will try to use a long run incremental plan.

Q It's interesting. I can hardly wait to see the study and the costs. Do you know what the acronym stands for?

A I do.

Q What does it stand for?

A It means percentage interstate usage.

Q How is that acronym used?

A It is part of a report that U S West requires companies like ours to submit on a quarterly basis.

Q And why do you submit that report?

A We submit the report so that there's an indication of what percentage of our access fees are interstate access fees and what percent are intrastate.

Q And do you submit such a report to U S West?

A We do.

Q So I take it from that you provide both intrastate and interstate toll services?

A Yes, sir.

Q In the interstate arena, are you aware of the recent FCC orders that came out around the first of May of this year which have an impact on the interstate access rate?

A Yes.

Q And what is your understanding of what that impact will be?

A Well, it's my understanding that the desire of the FCC is over a period of years to move from a time sensitive situation to flat pricing. Pricing will be shared between the subscriber on a subscriber line charge or a SLC and a flat fee paid by the interexchange carrier, referred to as a PICC.



Q Does that reduce the overall minute of use  
that you pay for interstate switched access?

A I don't know if I know yet. As far as  
yes, but as far as the overall cost, I don't  
know that I know yet.

Q But it does reduce the switched access price  
that you will be paying for interstate switched access?

A Yes, it does.

Q Do you know by how much?

A No.

Q Do you believe on behalf of Midco that all of  
the RIU reports that you have submitted to U S West are  
correct?

A Yes.

MR. HEASTON: I have no further questions.

MR. HOSECK: Staff?

### CROSS-EXAMINATION

BY MR. CRENER:

Q Good morning, Mr. Simmons.

A Good morning.

Q Now, Harlan was talking to me and I'm all  
set up. I think your attorney asked you about the  
services your company provides and you said long  
distance and local.

A We're not currently providing local. We have

reached an agreement with U S West. We hope to have  
 before the Commission soon, but we intend to  
 provide local service as well.

Q And do you provide any other services?

A We provide paging, we provide Internet  
 services, we provide end bond telemarketing services  
 and answering services.

Q Are you the cable people too?

A Cable is a different division.

Q Same parent?

A Same parent.

Q Is the switched access rates for non U S West  
 exchanges higher or lower than U S West's request in  
 the docket?

A They are for the most part higher.

Q Does your company have statewide averaged  
 rates?

A Do we offer statewide averaged rates?

Q Yes.

A In some of our plans we do. Now, in the  
 majority of our plans we do not. There is a difference  
 in the rates between U S West territories and  
 independent territories.

Q Do you have route specific rates?

A No.

Q Do you have volume discount plans?

A Yes.

Q Did your company submit any data requests to the court for this phase of the docket?

A No, we did not. With our coalition of TAG, we kind of divided the duties up; and we left that in the assignment with Mr. Noonan, who is present on site.

Q And what was your assignment?

A My assignment was to keep us all from tripping.

Q Were you successful?

A Yes.

Q Well, then you're better than I am. How many residential customers do you serve?

A Under 100.

Q Do you know what you're currently being charged for switched access?

A Currently being charged for switched access

from 0.50 cents?

Q Yes.

A Yes.

Q And what is that?

A 6.4 cents.

Q You had discussed earlier about customers are going to come to you and they're going to say, "Why is

**START**

**OF**

**RETAKE**

Q Do you have volume discount plans?

A Yes.

Q Did your company submit any data requests to the court for this phase of the docket?

A No, we did not. With our coalition of TAG, we kind of divided the duties up; and we left that in the assignment with Mr. Noonan, who is present on site.

Q And what was your assignment?

A My assignment was to keep us all from fighting.

Q Were you successful?

A Yes.

Q Well, then you're better than I am. How many residential customers do you serve?

A Under 100.

Q Do you know what you're currently being charged for switched access?

A Currently being charged for switched access is 6.4 cents.

Q Yes.

A Yes.

Q And what is that?

A 6.4 cents.

Q You had discussed earlier about customers are going to come to you and they're going to say, "Why is

Q "Are you going up?" And so my question is, I mean, do you  
 tell them? Do you tell them why?

A I try to give them a reasonable explanation.  
 I would not possibly tell them why.

Q But I mean do you tell them, "Well, the  
 Commission has ordered this, or if they do order an  
 increase or U S West was allowed by law to put this  
 increase in, it isn't my fault, it's just the way  
 things are?"

A If you've ever been in the selling arena --

Q I have.

A -- trying to explain to a customer that it's  
 not my fault, the customer will tell you, "I don't  
 care." The customer really doesn't care about all the  
 arguments in all of it. They're not satisfied  
 especially with an explanation of why the rate is  
 going up. They want me to do something to make the  
 rate come down.

Q So is there a question more of a why are you  
 passing it on to me as opposed to eating it yourself?

A That's certainly a part of it. I'm sure from  
 the customer's standpoint they would expect me to eat  
 as much of it as I possibly could up to 110 percent.

Q You said you don't have the information that  
 the Public Utilities Commission has, and I'm not sure

**END**

**OF**

**RETAKE**

Q. Now you were talking about. But are you telling us  
Q. that you don't have it because you couldn't get it, or  
Q. that you don't have it because you didn't ask for it?

A. I don't have it because I didn't ask for it  
Q. and couldn't get it any way. It's confidential  
Q. information. I wouldn't want, you know, in looking at  
Q. what the other TAG companies are operating, I don't need  
Q. to know all that information about my company, and  
Q. they would not want me to know it about theirs.

Q. Well, just for information purposes, if you  
Q. have a confidentiality agreement, you actually can get  
Q. that information. You talk about the majority of your  
Q. customers are small business. What percentage of your  
Q. what percentage is a small business of your  
Q. customer base? What percentage is small?

A. Of our customer base?

Q. You kept saying the majority of our customers  
Q. are small business, so my question is 100 percent of  
Q. what business is small?

A. I think all of our customers would be  
Q. considered as small business.

Q. Then what is a small business? What's your  
Q. definition of that?

A. I think a small business is certainly, I  
Q. mean in my definition, somebody who has less than in



South Dakota 50 employees. It is somebody who has  
at least 14 lines of service.

Q So that's just your definition. That's not a  
standard definition?

A It's mine. And, again, a goodly number of  
the customers are small businesses that may only have a  
one-line phone.

Q Okay. And so you don't have any large  
businesses, according to your definition?

A No.

Q What percent of interstate -- intrastate  
usage do you have versus interstate usage?

A I don't know.

Q Can you find out?

A I'm sure I could get the information, yes.  
You're talking about in general, not just in U S West  
territories.

Q Right.

A Again, if it were just U S West territories,  
U S West could provide the information. That's what  
the PIU reports are.

Q Let's talk about that PIU report. I have a  
reference to a Mary Lohnes. Do you know who that is?

A I do.

Q Who is that?

A. Mary Lohnes is our telephone services product manager, and she's here today.

MS. CREMER: I'm going to get this marked as an exhibit.

(EXHIBIT NO. 156 WAS MARKED FOR IDENTIFICATION.)

Q. I'll let you look at that. Not the attachment. I'm just looking at the letter. Have you had an opportunity to read that?

A. Yes.

Q. Looking at the paragraph that starts in SDPUC Docket F-3663, it says in there that this is a reminder that the PIU is to be reported along with the above administrative rule requirements. Basically what you're sending to U S West you're supposed to be sending to us. And you haven't done that, and my question is why?

A. Until this moment, I didn't know that we hadn't done that.

Q. Okay.

MR. HOSECK: Point of clarification, Counsel. Is this exhibit going to be offered?

MS. CREMER: Oh, yes, I'm sorry.

MR. HOSECK: That would be 156?

MR. RITER: We're going to object to it if

it's got these attachments.

MS. CREMER: No, it's just the front page.

MR. RITER: I'm also going to object to it by way of relevance. I don't see how that is necessarily relevant to the issues involved in this case.

MR. HOSECK: Response?

MR. GERDES: MCI would also object on the same grounds and that is lack of relevance.

MR. HOSECK: Would you care to address that?

MS. CREMER: I don't have a response.

MR. HOSECK: I'm going to sustain the objection.

Q. You also stated at some point that you have a considerable amount of intraLATA service. Could you quantify that?

A. Quantification of that would be disclosure of our PIU numbers, and I don't know that I'd like to do that.

MR. RITER: And if that's what it's calling for, we would certainly object to that because part of that is certainly a trade secret within the industry for this particular number, and I don't think it's something that should be revealed or ought to be required to be revealed in an open hearing.

MS. CREMER: He was using the word

considerable, and I just was curious what that might be if he knew it.

MR. ROSECK: The objection will be sustained.

Q. Can you turn to page two of your prefiled testimony, which is marked as Exhibit 33? And on line four you talk about competitive and reasonable rates. Do you see that?

A. Yes.

Q. How was that determined?

A. I guess it isn't quantified. It is qualified as to how it plays in the competitive market. What we have been able to do against our competitors, whether they have a national focus, original focus, or a local focus, is to offer rates that are, in fact, competitive, that are deemed reasonable by our customers. And reasonable is a very relative term. And I guess I know that we've had some discussion about rates and what constitutes rate shock and all of those type of things. I think rate shock is constituted the moment a customer deems it no longer reasonable.

Q. So did you compare it to something, is that what you told me?

A. I compare it only to our ability to compete with the other providers who offer service in our service area.

Q. Whose rates did you compare?

A. We compare, frankly, on a daily basis with the people who are operating and visiting with our customers.

Q. Such as?

A. Frankly, for the most part, TAG companies and some others. McLeod Telecommunications or McLeod is a comparable point. But really the -- and also we run into some of the telemarketing campaigns. Those telemarketing campaigns may, in fact, have strange names, but they might be a marketing company or another telecommunications company. And some of those would include occasionally AT&T, MCI, more likely than not, WilTel, which is very active in smaller businesses in telemarketing services. And our rates compare with some of those companies.

Q. And I know I asked you and I wrote it down but now I can't find it. What did you say you're being charged for switched access right now?

A. I believe 6.4 cents.

Q. Okay. And when did that increase go into effect?

A. I believe it was June 13th.

Q. Okay. So we're talking what, three months now that's been in effect?

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

SEP 1 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT  
OF SWITCHED ACCESS RATES FOR  
U S WEST COMMUNICATIONS, INC.

) TC96-107

) Volume III

) Pages 121-480

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS:

September 10 & 11, 1997  
Room LCR #1, Capitol Building  
Pierre, South Dakota

PUC COMMISSION:

Jim Burg, Chairman  
Laska Schoenfelder, Commissioner  
Pam Nelson, Commissioner

COMMISSION STAFF

PRESENT:

Camron Hoseck  
Karen Cremer  
Harlan Best  
Gregory A. Rislov  
Bob Knadle  
Dave Jacobson  
Charlie Bolle

Reported by: Lori J. Grode, RMR

1 A. Yes.

2 Q. I notice throughout your testimony you talk  
3 in terms of as though "this hasn't happened. could  
4 severely impact us, may happen, will be a detriment."  
5 words like that. Don't you, in fact, have something  
6 I mean it's been in effect for three months. Has this  
7 had an impact on you, and if it has, how?

8 A. Well it has had an impact on us obviously.  
9 Maybe I'm afraid to phase the reality of that. and  
10 subject to an operations review that I'll have with my  
11 boss coming up very soon, it will be drilled home. So  
12 it has indeed tipped our telephone services product  
13 upside down. There are a great number of our customers  
14 that we're serving right now where frankly the costs  
15 exceed the revenue and obviously we can't keep it up.

16 But, again, in this interim time period,  
17 knowing this hearing was coming up, I could not go back  
18 to my customers and say, "We have to raise your rate  
19 but it might be coming down in the future." The  
20 customers really have a problem with rates going up and  
21 down and all around. They need to know what the rate  
22 is going to be. And, again, I was concerned that we  
23 made an adjustment in all of this, even telling the  
24 customer this may be just a temporary adjustment. But  
25 you know, I can't eat these costs. In the meantime

7041 telemarketing call from a national carrier come  
on, they would tell me, "Gee, we'd like to stick with  
you, but business is business and we can't afford it  
and we're going to have to cancel our services."

Q. So as of today's date you have not raised  
rates or reduced services?

A. We have not raised rates; we have not reduced  
services.

Q. On page three, lines 21 and 22, you state  
that there would be reductions on the per minute access  
charge in favor of a subscriber line charge and the flat  
rate charge. Do you see that?

A. Yes.

Q. You told Mr. Heaston that you've read the  
Administrative Rules. Do you believe that they allow  
for a subscriber line charge?

A. No.

Q. Do you believe that the present  
Administrative Rules allow for a flat line charge?

A. I think the present Administrative Rules are  
in conflict with the FCC report and order.

Q. Okay. But do you think they allow for a flat  
line charge?

A. No.

Q. And are you advocating a state end user



1 charge?

2 A. Am I advocating? I don't know what I'm  
3 advocating. Do I advocate that it's worthy of  
4 discussion to understand where we should be going?  
5 Yes.

6 Q. Are you recommending, though, to this  
7 Commission that we have an end user charge?

8 A. A subscriber line charge?

9 Q. Yes.

10 A. I don't know if I'm advocating that that  
11 should be statutorily relegated to the end user. It  
12 may, in fact, be an option whether it is charged to the  
13 user or not, but it may be a better way of getting at  
14 it.

15 Q. Okay. I guess I was talking about an end  
16 user charge rather than a SLC charge. I'm talking  
17 about an end user charge.

18 A. I guess I didn't see a difference between the  
19 two.

20 Q. Okay. And why if you don't see the  
21 difference, then why aren't you advocating an end user  
22 charge? Or if you are advocating it, I understand you  
23 weren't advocating it, and so my question is why not?

24 A. I think the answer is I don't know if I'm  
advocating or not. I don't know really what the impact

Q The access charge reform order, how that affects --  
 would affect our type of customers. It has some real  
 tremendous opportunities in clearing up a lot of these  
 problems. And I guess to my read right now, I'm  
 concerned it may be more advantageous to very large  
 users than it may to smaller users as the FCC has  
 designed it. I think it's a work in progress. I don't  
 think this is over yet. I'm referring specifically to  
 the Notice of Proposed Rule Making that was adopted  
 September 3rd. It has to do with the universal service  
 order and the access charge order, but there's still a  
 lot of conversation on how all this comes together.  
 And I again would prefer to reserve judgment on what I  
 am advocating until I fully understand what this is  
 going to mean for the state of South Dakota and,  
 finally, for my customers.

Q Well, you said it might be advantageous for  
 large customer. What do you define as a large user?  
 Maybe that was your term?

A The large users are ones who are operating  
 without access at all. They're operating direct  
 access.

Q And then if you look at the bottom of your  
 testimony on page three, line 25 -- or line 24, excuse  
 me, you talk about a 25 percent increase. Could you

the 25 to the statute or rule that permits a 25 percent increase rather than using the switched access rules?

A I cannot.

Q And so that was just arbitrary on your behalf?

A Absolutely.

Q Do you believe that the public interests rest solely on what resellers such as Midco pay for switched access?

A No.

Q Do you believe that the switched access pricing rules have an underlying public interest basis?

A Do the rules have a public interest basis?

Q Yes.

A Yes.

Q Okay. And do you know what those are?

A Under the switched access rules and even the question of the cost model, I believe it does have a public interest aspect. As I understand it, the cost model was designed to create a ceiling, or if not a ceiling, at least a benchmark so that prices could not get out of line. I mean you have to start somewhere. You have to have a point that makes sense due to some sort of accounting scrutiny. And, again, I don't

Q. Now that the Commission is required to just assume that the number that comes out of the cost model is the number it is, in fact, a benchmark.

Q. So what role, then, do you think that the costs that are contemplated in the switched access cost study play in the establishment of a rate?

A. What role does it play?

Q. Yes.

A. It plays the role, as I mentioned, as a benchmark.

Q. How would you change the switched access cost study inputs to reflect to be what you believe are appropriate costs?

A. Oh, my, oh, my. I'm not qualified to answer that.

Q. Who would be with the TAG Group?

A. I think I would have to defer to the CPA's in the group. Mr. Thurman is a CPA, and Mr. Noonan is a CPA, and also to my understanding has been involved in actual work before and knows how to get at that. I, personally, do not.

Q. Okay. Do you think that -- and if you don't know this, you can tell me -- that there are changes to move costs. Do you believe that costs should be moved out of the switched access costs? Some costs should be

... out of those costs?

A I can't.

Q You just don't know?

A I can't.

Q How does Midco measure its costs of providing  
...LATA toll?

A How do we measure it?

Q Yes.

A Through a series of reports that we  
... We look at differences between minutes  
... and minutes billed and, again, we're not able  
... all minutes purchased. There are some network  
... There are busies; we don't charge for  
... We're charged for busies, but we look at those  
... reports and measure the efficiencies that

Q Do the costs of providing service influence  
... product offerings?

A Yes.

Q And if all resellers must pay increase  
... access costs, isn't the effect competitively  
...

A No. It may be competitively neutral within  
... the companies who are based in South Dakota, if  
... are companies only doing business in South Dakota

But, again, a lot of the competition is from companies that are providing services throughout the entire nation or with a larger number of offices where they can, in fact, equate those numbers over a wider area. All you have to beat us on a rate is just a penny and a lot of our customers will say, "We'd really like to do business with you, but the cost savings justifies a move."

Q So are you telling me that this Commission should ignore costs, or is there a major structural problem with in the establishment of the switched service rates?

A No. My purpose today is not to tell the Commission what they should be doing. My purpose is to discuss with the Commission what the impact would be on companies like ours who provide services to small businesses who are based in South Dakota whose employees live in South Dakota. I can only discuss the impact of the impact on companies like us.

Q Okay. Do you feel U S West is receiving an unfair benefit here?

A I'm not sure if I can judge whether it's an unfair benefit or not. It just seems to me that the increase requested is a tremendous increase. I wish I could increase my numbers, any one of my product

...like that.

Q Is it possible that U S West has been ~~switching~~ switching switched access costs in that, in fact, ~~we~~ we been getting the benefit of the bargain for at ~~least~~ the two years you've been there?

MR. RITER: I'm going to object to this line of testimony. I haven't thus far, but it seems like ~~we~~ we're getting far afield on really the issues involved ~~and~~ and this is calling for speculation, as have a ~~number~~ of the questions that I think the relevancy is ~~easy~~ out.

MR. ROSECK: It will be sustained.

Q If you look at page three, line 25, of your, ~~let~~ ~~me~~, through page four, line one; and you state ~~that~~ this type of increase would never have been ~~enforced~~ in a competitive marketplace. And then on ~~page~~ four, lines four through seven, you go on to state ~~basically~~ because we're in a regulated industry U S West ~~couldn't~~ be allowed to do this, blah, blah, blah. My ~~question~~ question is why does the switched access cost study ~~support~~ support an approximate 100 percent increase in rates?

A. Why does it?

Q. Yeah.

A. Boy, you got me.

Q Is it possible that the 3.14 was too low?

A I don't know.

Q Is it a possibility? Yes or no?

A Could be. But, you know, I almost doubt it. Watching the activities of U S West, they really are a fine company. I doubt that they would ever allow something to be too low for too long. And, again, it's I don't know.

Q Is regulated industry -- do they have the opportunity to charge rates that are less than costs?

A Well, as I'm learning, apparently not.

Q Have you ever heard of social rate making?

A No.

Q And that's actually what's been going on here with the 3.14 rate; isn't that correct?

MR. RITER: Just a moment, I'm going to repeat again. I think that the question is -- especially, counsel is trying to testify herself. She's not asking questions. It's improper in scope and form.

MS. CREMER: It's cross-examination would be my response.

MR. HOSECK: The objection is sustained.

Q Are you advocating a phased-in rate?

A No, not necessarily.

Q Okay. Well, not necessarily, does that mean maybe you would or that wasn't -- maybe that wasn't



Q. Why?

A. No, that was not my duty. I don't know what a switched in rate means any more. You know, we discussed that quite some time ago about what a switched in. And I read something where even the move from 14 cents to 6.4 cents was considered a switched in. So I guess I don't know what the word switched in means any more.

Q. But at this time you're not advocating a switched in rate?

A. No.

Q. Okay. You said you had read the rules of the switched access rule. Was there a particular rule or rule that you believe U S West did not properly apply in coming up with this switched access cost study?

A. No.

Q. Okay. So, in other words, you believe that U S West did follow the rules?

A. To the best of my knowledge, yes.

Q. Do you think the inputs are unreliable?

A. I don't know.

Q. Do you think the inputs are outdated?

A. The inputs?

Q. That went into the cost model.

A. I don't know.

Q You don't know because you haven't looked at the cost study, or you don't know because you don't really understand the cost study? You're like me.

A Well, I don't really understand the cost study.

Q And I don't know my question is with the individual inputs. I defer that to, frankly,

Mr. Noonan.

Q Okay. Well, then, I'll ask him those. Could you turn to your rebuttal testimony, please. On line 100 you talk about the rate increase would amount to 50 or 60 per month. Now, do you have evidence of that or is that speculation?

A I don't have specific evidence of that. That is a result of looking at the impact of a number of our categories.

Q And I did the math and you can tell me if I'm wrong, but that would be \$1.67 a day that you would be passing on to a business customer; is that right?

A Could be. Again, our customers are not interested in \$1.67 a day. They're interested in \$600 a month.

Q Or \$1.67 a day, depends how you break it

it up.

A Believe me, our customers will break it out to have the highest dollar impact possible.

Q And I understand that. On page two, line 25, answer no to your question about whether rate increases could in effect be in the customer's best interests; is that right?

A Yes.

Q Is there a connection among service offerings, service quality system, capacity system, reliability investment, customer usage, and the cost of service?

A I'm sure that there is. As perceived by our customers? Not particularly. They expect their service is going to be 100 percent 100 percent of the time.

Q But you understand, though, that these variables, any of these variables, if they were to increase, would affect the cost of service?

A Of course.

Q If we assume that to be true, then, that any of these variables -- if the increase will affect the cost of service, who do you think should bear the cost of that increase?

A Ultimately, I believe the customer, the end user, the consumer should bear the cost of the increase. I should say should bear the cost of a reasonable increase.

Q Okay. And you understand that the Commission is required to balance many interests in this case?

A Yes.

Q And I assume you don't think TAG's -- well, maybe you do. I'll ask you do you think TAG's concerns take precedence over the other interests in this case?

A I would hope that no one's interests would take precedence over anyone else's interests just on the basis of company name.

Q Okay. Did you do an analysis of staff's cost study. Or was that somebody else?

A No.

Q Did anyone from TAG do an analysis of staff's cost study?

A I believe Mr. Noonan did.

Q Do you believe the switched -- do you believe the switched access costing rules were developed in the public interest?

A I answered that, yes.

Q Okay. On page three, lines 24 and 25, you talk about forced and I think you underlined the word.

A It was that fit of madness again.

Q Well, good. Now you can explain to us what you mean by that.

A I stated that earlier that I understood the

Mr. Rislov's theory, when he states that lower rates will promote resell competition but will inhibit facilities based competition. Do you agree that my answer was no? That was an argument, really, as components within the Telecommunications Act itself.

My comment is that I don't think it is in the public interest to force facilities development as a way around increased prices for resellers. There are a lot of other reasons why you might want to develop facilities. And I just I wanted to take exception with that particular statement, understanding the theory of it. But in practicality, I don't know that it was the Commission's job to say we want you to go ahead and increase these rates because as a result of that we may have more facilities developing in the state.

It's been my belief, I guess, that the most likely facilities developers over the long term in this state are the people who have made a commitment to North Dakota, who are now operating in South Dakota, whose employees live in the state by choice. And that, really, what might happen if those prices are driven up during this tender stage of development that we're going through right now, won't be around to develop any facilities and, in fact, you may end up with less

to those developers.

Q Why don't we have with the rate at 3.14 and everyone seems to think that's a good low rate -- or I guess I won't say that. People are not opposed to that rate at this moment. Why don't we have more competitors out there?

A We're trying.

Q Who is?

A Companies like us. Developing facilities are very capital intensive. It takes us a while to at least understand what we can do. We will have several steps that we have to step through. Again, this is a hot area. We're dealing with breakthroughs, frankly, in technology and regulatory all at the same time. It takes us a while to get into all of this.

Never mind the fact that some of those things that might have allowed us to get into this a little bit quicker that have to do with the Telecommunications Act itself has gone through a pretty heavy-duty battle in the Eighth Circuit Court. Some of those things that would have allowed us to get into this have been kind of slowed down just a bit.

Q How many switched access providers are there providing exchange-wide service in U S West territory?

A How many what?

Q How many switched access providers are there providing exchange-wide service right now in the U S West territory?

A The ones we know of, we are, TAG companies

Q You're providing switched?

A Yeah, we have a switch and everything.

Q Okay. Switched access provider. And you know that you're being held up, if I understand, or you were just allowed under the Telecommunications Act of 1996. Isn't it true that the U S West service territory has been open to competitors since the late 1990s?

A It's been opened to competitors?

Q Yes.

A Are you talking about local service or long distance service?

Q Local.

A Not that I'm aware of.

Q Would you like an alternative to using U S West facilities?

A I guess the whole idea of the Telecommunications Act is to offer greater competition throughout. I don't know if I would like to have an alternative to using U S West services. I guess it

It would be nice to have alternatives. We might see -- we might not have this discussion if that were the case.

Q Is it possible, though, a competitor's rate may actually be higher than what U S West is charging?

A If the competitor's rate is higher than the rate U S West is charging, that competitor might be having a problem selling its services unless, of course, its service quality was so much superior. I think that would be difficult to have in my opinion.

MS. CREMER: That's all the questions I

have. Oh, wait a minute, I do have one more. Sorry. Last one.

Q Would you agree with me that whether or not you pass on any approved increase, that that's a business decision on your part?

A Yes, it's a business decision. It may not be a "can I do this or that." I might be relegated to just doing that. I guess I would like it to be a business decision, but where it becomes difficult is where I have no decision.

MS. CREMER: Okay. That's all I have.

MR. HOSECK: Cross-examination by Sprint?

MR. TIESZEN: No cross.

MR. HOSECK: MCI?



CROSS-EXAMINATION

BY MR. GERDES:

Q Mr. Simmons, several witnesses have agreed that what the Commission is doing here is to determine if that's fair and reasonable and in the public interest. Would you agree with that?

A Yes.

Q Who do you think is closer to the public, you and your representatives or Commission staff?

A Well, I would hope that we would be closer.

Q Thank you.

MR. HOSECK: That concludes your cross-examination?

MR. GERDES: Yes.

MR. HOSECK: AT&T?

CROSS-EXAMINATION

BY MR. LOVALD:

Q Mr. Simmons, historically, is it your understanding that Mr. Gerdes's client, MCI, started as a reseller?

A Yes.

MR. LOVALD: No further questions.

MR. HOSECK: Dakota?

MR. MARMET: No questions.

MR. HOSECK: Redirect?

MR. RITER: I have no redirect.

MR. HOSECK: Commissioners?

COMMISSIONER SCHOENFELDER: First, I'm going to start out, Mr. Simmons, you talked about PICC charges and SLC charges in the access order. Those are basically interstate, are they not?

A. Yes.

COMMISSIONER SCHOENFELDER: The FCC only has jurisdiction over the interstate. At least, that's what the Eighth Circuit said?

A. Correct.

COMMISSIONER SCHOENFELDER: Just so we have that on the record. Mr. Riter, I am going to ask all of your witnesses some of the same basic questions. I don't intend for them to answer with confidential trade secret information. Mr. Simmons has already answered some of those questions. But just so you know, I intend to ask those to all of your witnesses so they can sort of be prepared.

So the first question is has your company ever requested interconnection from U S West under the Act?

A. Have we requested interconnection?

COMMISSIONER SCHOENFELDER: Negotiated it or entered an agreement with U S West for actual

. . . . . connection.

A. Yes.

COMMISSIONER SCHOENFELDER: And have you decided whether that would be more preferable than as a reseller if you used unbundled network elements? Have you made a business decision? And, frankly, I do not know. Would it be cheaper for you to do one way than the other, if that's possible?

A. We don't know either. We are working toward our business decision was to get to a resell agreement first and then become involved in the interconnection agreement. The interconnection agreement is substantially more complicated. We're involved in that now with one group. We have complete agreement with the resale group.

COMMISSIONER SCHOENFELDER: Okay. Then does Mexico eventually -- and you answered part of this. You said you're buying switches. I think part of your answer told me that you were going to go to some outside plant, to some actual plowing fiber in the ground. Is that what you intended to answer that question with, or are you going to still use U S West outside facilities and other companies' outside facilities for facilities based?

A. I think that's unclear. Since we do have

that option, we just don't know how that would work.  
The initial intention right now is that we would  
use U S West facilities.

COMMISSIONER SCHOENFELDER: And you talked  
about offering some services to residential customers  
other than just business customers, it sounded to me  
like And so you can clarify this. You do intend to  
ask this Commission for a certificate for local  
service, or you have already? I can't remember?

A. We have and it's been granted.

COMMISSIONER SCHOENFELDER: I couldn't  
remember whether you had or not. Do you intend to go  
into the local residential market?

A. No, it's not a target market today.

COMMISSIONER SCHOENFELDER: Could it be in  
the future? I don't intend for you to reveal your  
business plans here. I just want to know if that's  
something you're considering because the option is  
there.

A. Yes. It is not in our long-term plan.

COMMISSIONER SCHOENFELDER: Thank you. And  
I'll have those same questions of everyone, so if  
they're prepared to answer them. Thank you.

CHAIRMAN BURG: I just have a couple. Does  
Midco join to use any facilities with Midco Cable?

A Depends on who you talk to. If you talk to  
me I'd love to. If you talk to cable guys, don't  
know. I think you're going to be dealing with that in  
some other issues that will be coming before this  
commission.

CHAIRMAN BURG: Do you have any long-term or  
short term contracts that you're bound by?

A Yes.

CHAIRMAN BURG: Do you know approximate  
duration? Do they run two years or five years?

A We had prior to the last year, frankly,  
contracts that would run as long as four years.  
Because of issues like this, we have made sure that  
we've made no long-term relationships or long-term  
contracts. We offer nothing beyond two years; and,  
further, the majority of the contracts that are being  
entered today are one year in duration.

CHAIRMAN BURG: And maybe you already  
presented this in a different way. But one of my  
concerns has been that the only thing that the law  
allows for us to allow a recovery of costs. Would you  
agree to that?

A As I understand them.

CHAIRMAN BURG: And that yet the only  
testimony that you've given has been not to whether

Q. Are those costs are legitimate or not.

A. Right. I am not an expert in that area.

CHAIRMAN BURG: But part of TAG Group is, and you did that in sort of what I'd call a hands-off approach to addressing the issue.

A. That was my intent.

CHAIRMAN BURG: Okay. I think that's all I

have.

MR. HOSECK: Does this prompt any recross?

MR. HEASTON: Yes, it does, if I could,

please.

#### REXCROSS-EXAMINATION

MR. HEASTON:

Q. Just a little follow-up on Commissioner Aaronfelder's questions. When you get into the local exchange market either through resale or through competitive services providing service through your own facilities, you will have to provide some form of switched access, will you not?

A. Yes.

Q. And is it your understanding that first from the resale environment that in the AT&T arbitration in this case the Commission ordered that you would share with U S West, if you're reselling in U S West service territory, you would share in the switched access

revenues?

A As I understand it.

Q And if you become a facilities provider and providing your own switched access, I don't know if you've thought about this and tell me if you haven't.

A I have.

Q Again, I'll ask you the same question I asked you. Having made that investment -- as you say, it's capital intensive to get in as a facilities based provider -- are you going to price that switched access based on a cost model like the Commission's which provides for recovery of your embedded actual historical costs, or are you going to look to recover those costs based on some theoretical, most efficient person that's mandated by a LRIC type of study?

A Fortunately, I don't have to do the work on that. We have a group of accountants that are working on all that. And the most recent questions they've asked is to try and build a model that would be forward looking. I don't know what it looks like.

Q Either you're the general manager and vice president, and I assume in that position you're kind of held responsible for the financial results of the company. Now, as a VP and GM of that company and if you had to make that decision, which do you think

you'd want to recover, the actual money you've put in the ground and in other facilities plus some return as put in the model, or in some theoretical costs that may or may not reflect what's in the ground?

A. Cost recovery is safest.

MR. HEASTON: Thank you. I have no further questions.

MR. HOSECK: Any further recross? If not, this witness may be excused. And we're going to take a 15 minute break.

(AT THIS TIME A SHORT RECESS WAS TAKEN.)

MR. HOSECK: Back on the record now.

MR. RITER, proceed with your next witness.

MR. RITER: Thank you. We call Fred Thurman

**FRED THURMAN,**

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RITER:

Q. Fred, you've been sworn; correct?

A. Correct.

Q. Please state your name and address for the record, please.

A. Fred Thurman, 110 South Phillips Avenue, Suite 202, Sioux Falls, South Dakota.



Q Mr. Thurman, did you testify in this matter  
last October, October of 1996?

A Yes, I did.

Q And did you preparatory to the hearing today  
file some prefiled testimony?

A Yes.

Q And did you file not only prefiled testimony  
but also some prefiled rebuttal testimony?

A Yes.

Q Have you also had occasion to review the  
testimony filed by other parties including the  
testimony for U S West?

A Yes.

Q I want to draw your attention first to  
Exhibit No. 14. Do you have that in front of you?

A Yes.

Q And can you identify that?

A That is my prefiled testimony.

Q If you were asked those questions this  
morning under oath, would you give those same answers?

A Yes.

Q And do you affirm those answers you've given  
again?

A Yes.

Q Also in front of you is Exhibit 42 -- excuse

Q Can you identify that?

A That's my rebuttal testimony.

Q If you were asked those answers -- or, excuse me, if you were asked those questions this morning, would you give those same answers?

A Yes.

Q And do you affirm those answers?

A Yes.

Q Do you have any additions or corrections to either Exhibit 43 or Exhibit 34?

A No.

MR. RITER: We would offer Exhibits 34 and

MR. HOSECK: Are there any objections to the admission of these exhibits?

MR. HEASTON: No, there are not.

MR. HOSECK: There being none, they will both be admitted.

Q Mr. Thurman, I would like to ask you a few questions relative to the testimony which you've presented in your exhibits. And then also, frankly, in an effort to get to all of your testimony right now, some questions regarding Ms. Wilcox, the areas that Ms. Wilcox has brought up in her rebuttal testimony. All right?

A Okay.

Q From your perspective, can you summarize for the Commission the effect of the proposed increase on the consuming public in South Dakota?

A That's a pretty broad question.

MR. HEASTON: I want to object to the question because he's only got his customer base. I would suggest that's what he's testified to.

MR. HOSECK: The objection will be sustained. Counsel, if you want to restate your question in another form, please go ahead.

Q All right. Let me talk first about your customer, about your own company, Mr. Thurman. What impact do you see that this might have upon your own company? And I believe in your testimony you've indicated that you are the president of FirstTel. Let me go back a step. Please, for the record, tell the Commission what FirstTel is and what kind of business you transact in South Dakota.

A Okay. That might be the efficient way to do this. FirstTel is a company that started out approximately four years ago selling long distance services, reselling long distance services. We have two area switches in Sioux Falls. Presently we also resell U S West local services and resell cellular

services of ComNet, Western Wireless. So we are selling a bundled service product.

We operate in South Dakota, North Dakota, to a limited degree in Minnesota and Iowa and Nebraska and Wyoming, so in all of the adjacent states to some degree. The majority of our business is in South Dakota. We mainly -- I shouldn't say mainly. Our entire customer base is small businesses.

To speed up the process, we do have what we probably consider one, at least, middle, mid-sized, probably large customer. All the rest would be probably similar to what Mr. Simmons was talking about in the range of number of employees and access lines. Really if you want to put it into some perspective, our average customer, as far as long distance services, would be approximately 140 to \$150 a month in long distance charges. So we have a large number of small, relatively small business users. Those would be customers all over the state of South Dakota.

We do direct selling. We have salespeople that are behind their windshield a lot of the time. We operate similar to Midco; consequently, they're probably our biggest competitor in most cases and vice versa because we do send our experienced salespeople out there to visit with the small business customer and

review their needs.

Q. When you talk about the types of services you offer and you mentioned bundled or unbundled, what would you offer to a small business customer in, say, Pierre, South Dakota? What kind of services could you offer to him or her?

A. We can offer long distance services of any type, local, their local exchange services, and any cellular services that they would need.

Q. Now, from the standpoint of your company, if the proposed access rate increase were to be approved, what impact might that have upon your ability to do business in the manner in which you have done your business?

A. Could you repeat that?

Q. Sure. What impact would this rate increase proposed, what would it have upon your particular company? What type of impact?

A. Well, the biggest impact would probably be in the decision as to how to absorb that or pass it through. And I think what we probably would ~~probably~~ consider to pass it through in the form of an ~~increase~~ in the intrastate rates. We used to have banded rates a few years back and now we're over time have gone to a flat rate, we would call it. So it's the same for

intrastate and interstate calling. We probably would go back to a banded, as we call it, rate structure where we would charge more for the intrastate calls.

Q. What impact might that have if other companies with whom you compete didn't have to make rate increases?

A. Our business would be probably affected differently depending on how well we are. Like I said, we cover probably virtually every community in South Dakota and deal with every local telephone company in South Dakota. The impact on our customers outside of the two or three larger cities in South Dakota -- that would be, of course, Sioux Falls, Rapid City and Aberdeen -- would be affected probably differently. In some locations we probably would -- if we could not work this through, we probably would not send people out to some of those communities and deal with them on a direct basis because that's quite an expensive proposition. That's why we don't have as much representation out in the smaller communities because it is expensive and we just are able to do it efficiently. The --

Q. Let me interrupt you for a minute then. So you differentiated between Sioux Falls, Rapid City, and Aberdeen as the large communities in South Dakota and

Q The impact might be different upon your customers in those communities as in the Pierres and the Hurons and the smaller communities. First, let's go back then to the larger communities. How do you anticipate that a company similar to your company would react to this increase in those larger communities?

A First of all, we have salespeople that live in those communities so they don't have to travel. So they can -- it's more cost effective to actually still do direct face-to-face selling and consulting with those people. And probably on an average basis, those would also be larger customers, larger users. So it's more efficient. Consequently, in those cities there's more competition. There's more companies in there doing business.

Q And does that include companies that are not South Dakota based companies?

A That's correct.

Q All right. And how would that impact your ability to pass on that rate increase in those particular communities?

A It probably would limit that. Our margins would go down accordingly.

Q Why?

A Because the majority of our business is in

South Dakota. We wouldn't be able to spread that out  
as much as some of our main competitors such as  
Sprint and MCI, AT&T.

Q So if you kept the rates as you're saying  
competitive with the out-of-state companies in those  
larger communities, what do you do? How do you make up  
the difference?

A Volume, we would probably and that's hard to  
do obviously. Everybody is trying to do that now, gain  
market share, and it's difficult. And so it would  
probably be difficult to do any better than we're  
doing.

Q Well, if you were to, what about the rest of  
the state? Is there an opportunity, then, with lesser  
competition in the remaining part of the state to make  
up some of the lost revenues from the major markets in  
the competitive outlying communities?

A In those other communities where we would  
have less competition from out-of-state companies where  
our competition would be other TAG members most likely,  
they would be in the same situation. We'd probably all  
raise our rates on the intrastate calls and be able to  
maintain potentially our margins.

Q So from that testimony, then, do you see that  
the impact on the consumers in Sioux Falls, Aberdeen



Q. Rapid might be less than the impact of this rate increase on the consumers in Pierre, Huron, Mitchell, and the other communities like that?

A. I would think so.

Q. Now, there was some testimony by Mr. Simmons and Mr. Rislov relative to facilities based competition. You've reviewed that, have you not?

A. Yes.

Q. Can you share with the Commission today -- or ask you another question. Tell the Commission, what sort of plans you have made relative to facilities based competition and in a general nature, not revealing trade secrets, but in a general nature.

A. We haven't made any definite plans. We've made several possibilities or discussed several possibilities. Obviously, we can't make any firm plans. We don't know what a lot of the costs are going to be with the changing environment and with a lot of decisions not made on what access rates will be, or what, or cetera. We've just made certain contingent plans.

Q. But you have already, I think, in your testimony you indicated that you do have -- you do own some watches?

A. Yes.

Q So you do right now compete in facilities  
switching?

A That's right. Those switches are not capable  
of switching local traffic, and so there would have to  
be a decision made on upgrading those switches which  
would really mean getting a different switch.

Q Okay. So that's a business decision that  
is being made or is being considered at this time, is  
that all you want to say?

A It's being considered, but we haven't gotten  
very far along on that decision.

Q Now, did you provide to Howard Susskind some  
confidential information relative to your company as a  
part of his analysis in this case?

A Yes, I did.

Q And do you affirm under oath today that the  
confidential information you provided to him is accurate?

A Yes.

Q Mr. Thurman, Barbara Wilcox has prefiled some  
background and part of your testimony deals with a  
comparison of South Dakota and North Dakota and New  
Mexico. Let me ask you first, I understood from your  
prior testimony that you do business in North Dakota?

A Yes, we do.

Q Do you have customers in North Dakota?

A Yes, we do.

Q Do you have any customers in New Mexico?

A No, we don't.

Q Do you sell services in all of North Dakota?

A Yes, we do.

Q Comparing North Dakota to South Dakota, do you experience or see as much competition in North Dakota as you do in this state?

A In most cases we do not.

Q What do you mean in most cases you do not?

A We see as much in the larger cities, being Fargo, Grand Forks, and some degree, Bismarck.

Q Are there locally based long distance companies in North Dakota?

A Not to my knowledge.

Q Are there locally based long distance companies in South Dakota?

A Yeah. It's really quite unusual in this country. Whereas, lower population areas, South Dakota is to have more than one, if any, so I think North Dakota is more typical than South Dakota. In South Dakota we have five.

Q Why do you think there's such a distinction between North Dakota and South Dakota?

A I'm not sure.

Q Are the costs of providing service in North Dakota higher than they are in South Dakota? I think from part of Ms. Wilcox's testimony, that the access rates in North Dakota are higher than they are in South Dakota.

A Yes, they are higher.

Q Without getting into specifics, but from the perspective of your company, is your profit margin -- how do you compare your profit margin from North Dakota to South Dakota?

A Well, our rates in North Dakota are higher than they are in South Dakota in most cases. Not in all cases such as in the larger cities. So that the fact that we're able to charge a little more, our earnings are approximately the same.

Q So the consumers in North Dakota, the customers in North Dakota, are paying more for the same service and product?

A Most cases.

Q Do you think if there was as much competition in North Dakota as there is in South Dakota that your profit margin would remain the same up there?

A Oh, I think that we'd be under. If it was like South Dakota, we'd probably have less margin up there.

Q And if the competition was similar in nature, what would be the options that you would pursue in South Dakota?

A Well, I think the margins were going to be less. We probably would cut back on some of the areas that we were serving. We wouldn't go out to the some of the smallest communities that we go to. We'd do that by telephone if we did it at all. So we'd probably cut back in the size of the communities and reduce the size of the customers that we would be involved with.

Q So are you saying that the smaller communities would have less competition?

A That would be correct.

Q Mr. Thurman, you testified at least on the record on the exhibit that of your professional background, but would you remind the Commission, please? What is your profession by trade?

A My profession by trade is a CPA.

Q And how long have you been involved in that profession?

A Twenty-four years.

Q Did you have occasion to review and discuss with Jerry Noonan the information that he gathered relative to issues involved today?

A Yes. I have.

Q And what is your general conclusion relative to the review that he performed?

MR. HEASTON: Objection. Objection. I mean, Mr. Noonan conducted the review. Mr. Noonan can speak to that.

MR. RITER: I withdraw the question. I don't have any more.

MR. HOSECK: Cross-examination, U S West?

MR. HEASTON: Thank you.

CROSS-EXAMINATION

MR. HEASTON:

Q To tag onto that, I understand it that since Mr. Noonan -- no pun intended -- since Mr. Noonan went down to Omaha, you did not?

A That's correct.

Q Are you familiar with the Commission's rules in Chapters 20:10:27 through 20:10:29?

A I don't know if I'd say familiar. I have reviewed them.

Q Have you reviewed the cost model that the Commission staff and the Commission has approved as a result of those rules?

A Not in detail.

Q So I take it that as a CPA you've made no

Q. Now, given your professional qualifications, that would qualify you to render any opinions as a CPA as to the costs that are generated by the price that's generated by the rules in the model?

A. Well, I wouldn't say that. I have done that indirectly through meetings and discussions with Mr. Noonan.

Q. But you haven't done it directly?

A. Right.

Q. And you would rely on the work of someone else in coming to that conclusion?

A. I would on Mr. Noonan.

Q. You testified that you were providing service to more than just South Dakota and you mentioned the states that surround South Dakota.

A. That's correct.

Q. And I think you also testified that you provide service throughout the state of North Dakota?

A. Right.

Q. Do you also provide service throughout the state of Nebraska?

A. Almost all of Nebraska. We do not in Omaha and a few other cities.

Q. Do you provide service -- well, let me ask this: Do you provide service in Iowa?

A. Northwest Iowa.

Q. And what part of Minnesota?

A. You could say the west half of Minnesota.

Q. In the Twin Cities?

A. Very little.

Q. In Wyoming where do you provide service?

A. The east half of Wyoming.

Q. So it would include both Cheyenne and Casper?

A. Yes.

Q. And those are the two largest communities in Wyoming?

A. (Witness nodded affirmatively.)

Q. Yes?

A. Yes, excuse me.

Q. She can't get the nods. Do you in North Dakota -- then I take it since you provide service throughout the state, you purchase switched access from the other local exchanges companies in North Dakota that provide switched access?

A. Yes.

Q. In your experience, are the prices for switched access from the other local exchange carriers in North Dakota higher or lower than what you pay U S West in North Dakota for switched access?

A. They would be higher.



Q. Same question for Minnesota. Do you also purchase from companies other than U S West?

A. Yes.

Q. Are the switched access prices lower or higher?

A. I think they're higher. I think they're all higher.

Q. In all the states where you purchase switched access?

A. I couldn't tell you for sure if all of them are higher or not. I think they are.

Q. So far we're through North Dakota and Minnesota. What about Iowa?

A. Well, tell you the truth, that's not something I look at every day; and I don't know if I've ever looked for one that might be lower than U S West.

Q. You have been the president of FirstTel since when?

A. April of '94.

Q. And have you, as the president of FirstTel and a member of the TAG Group, been involved in the switched access docket from the beginning, in '95?

A. Yes, I have.

Q. Were you involved in a previous docket concerning switched access services?

A I don't remember.

Q Okay. You have been aware, haven't you, through your participation in this docket, that the price for U S West switched access as developed by the model in the model used approved by the Commission developed switched access prices in excess of six cents a minute?

A Yes.

Q Have you also been aware that the other local exchange companies in South Dakota are required to file cost studies and use the model consistent with Commission's rules?

A Yes.

Q Have you as the president of FirstTel intervened in any of those dockets in the last three years?

A No, I have not.

Q Have you proposed -- let me ask this: With the limited review that you've had of the rules and the model and the discussions you've had with Mr. Noonan, do you agree with the rules that the Commission has in place in Chapters 20:10:27 through 20:10:29 and the model that is used to calculate the price for switched access?

A That was a long question. I think I got

Q Well, do you agree with the model and the rules that developed the switched access costs and therefore the price?

A I don't think I'm in a position to disagree with the rules, and I don't think I understand the model enough to know that I would agree with it or not agree with it.

Q In your testimony I believe you raised the issue of the proceeds from the sale of the 55 exchanges.

A Yes.

Q Are you familiar with the orders? Have you reviewed any of the orders that the Commission issued approving the sale of those 55 exchanges?

A I did some, but it's been a while.

Q Did you read that portion of the order and that a conclusion of law that indicated that the proceeds from the sale of those exchanges could not and would not be used for either the -- by either the Commission or U S West for purposes of establishing a trust?

A I guess I remember that.

Q The same question I asked Mr. Simmons: Do you know what the acronym PIU stands for?

A Yes.

Q And does it stand for percentage interstate usage?

A Yes.

Q Do you provide a report similar to what Simmons testified to to U S West also?

A Our company does.

Q Do you see that report?

A No, I don't.

Q As the president of the company do you assume that report is accurate?

A Yes, I do.

Q Do you know how that report is calculated?

A Not really.

Q Are you familiar with the recent FCC orders regarding interstate switched access?

A I'm not very familiar with them, no.

Q Do you have any idea what the impact of those switched access rules were on the price you pay U S West for interstate switched access?

A Just generally speaking.

Q What is your general understanding?

A That over a period of time those would or should be reduced.

Q Assuming -- do you know what you pay right

Q. Now for interstate access to U S West right now in South Dakota?

A. Well, I know what our bills tell us right now and that's 6.4.

Q. No, interstate.

A. Oh, interstate? I'm not for sure.

Q. You indicated that you have an interconnection agreement to resell local services of U S West in South Dakota; is that correct?

A. Yes.

Q. Do you understand as part of that the Commission's decision in the AT&T arbitration that you will share in the access revenues for those customers that you provide local service to on a resale basis?

A. Under the AT&T arbitration?

Q. Yes. The Commission's order.

A. I'm not sure of that.

Q. So you're not aware that you will share as a source of revenue in switched access charges when you resell a local service?

A. I mean if the arbitration is approved?

Q. The arbitration has been approved. The order is 95-184 is out.

A. I didn't know that.

Q. The fact that you compete in more than just

South Dakota, is that a business decision your company  
has made?

A Yes.

Q No one is forcing you to provide service in  
any other state other than South Dakota?

A No.

Q And no one is forcing to you provide it just  
in South Dakota?

A Correct.

Q As the CPA and the president of FirstTel, when  
you look at recovering costs for facilities that you  
own and purchased and put into service, wouldn't you  
prefer to recover the costs, actual costs, of those  
facilities rather than some theoretical forward-looking  
most efficient type of cost that may or may not relate  
to what you've actually paid or the investment that  
you've made in those facilities?

A I would prefer to.

Q And do you understand that the Commission's  
rules in 20:10:27 through 20:10:29 provide for the  
recovery of the historical embedded actual costs of the  
investments?

A Yes.

MR. HEASTON: That's all I have.

MR. HOSECK: Staff?

CROSS-EXAMINATION

Q. W. W. CREMER:

Q. Good morning.

A. Good morning.

Q. Do you provide services statewide?

A. Yes.

Q. And what sort of services do you provide?

A. I provide long distance and cellular services statewide and local services in the U S West areas.

Q. And does your company provide -- do you have a parent company that provides anything else?

A. No.

Q. Who compromises TAG? What parties compromise that group?

A. FirstTel, Midco, TeleTech and TelServ.

Q. Okay. Just a minute, FirstTel, Midco?

A. TeleTech and TelServ.

Q. Four of you?

A. Yes.

Q. Who are the five companies, then, that are the five local resellers?

A. The four of us and then PAM Communications.

Q. Now, there was an article in yesterday's

August 18 FirstTel and TeleTech now related in some

way?

A Yes, they are.

Q And how is that?

A We have combined the companies, merged those  
companies.

Q Okay. Did you get Commission approval to do  
that?

A We called the Commission office and we were  
told that we should just write a letter explaining the  
transaction. That's been done.

Q Okay. What is the percentage of intrastate  
versus interstate usage for your company?

MR. RITER: Just a moment, I'm going to  
object to a specific question relative to that item. I  
think it calls for a trade secret when we start  
breaking up interstate and intrastate by percentage.  
It's similar in nature to the objection I made when  
Simmons was asked the same question.

MS. CREMER: He didn't object actually when  
Simmons -- when I asked that question. He objected  
to a follow-up when I asked him to quantify it.

MR. RITER: All right. Then I object to the  
quantification of this.

MS. CREMER: Then I wasn't going to have him  
specify.

A What was the question?



MR. HOSECK: Just a minute. If I'm understanding the question, you're asking for percentages. How is that different from your prior objection in quantification?

MS. CREMER: He didn't object before.

MR. HOSECK: Well, there's an objection before me now; and I will sustain it.

MR. WELK: Can I be heard on that?

MR. HOSECK: I'll withdraw the ruling.

MR. WELK: Just so you know, Hearing Officer and Commission, as part of the rebuttal in this case U S West is intending to talk about the percentage of interstate uses. These companies have come in and said that there's a rate shock. And I believe in order to remove their bias and credibility, you need to know what their percentage of interstate usage is versus intrastate usage.

And as you've heard this morning already, those numbers are reported to U S West. And we have prepared confidential exhibits, what I will show to counsel for each one of their companies which I will show to them before anybody else sees it. And we have also prepared an exhibit that shows the Commission all of those percentage interstate uses together. And so I wanted to let you know that.

But we believe it's relevant because what these companies are saying is this is affecting our bottom line. And depending on their usage when they have more intrastate than interstate, the rates are much lower for interstate. So we're going to have to look and the rates are going down. If they have a higher percentage of interstate and the rates are going down than intrastate it's certainly relevant to judge the rate shock that these companies are going to report.

MR. RITER: If I might reply, the rate shock that we're talking about is not what the companies have to pay, it's what the consumers in South Dakota are going to have to pay. And we're going to offer testimony later that will go to these issues. I think it's premature at this time and there's been no foundation at this time to get into this issue. And I believe that it's inappropriate at this time certainly, and more presumably at my time.

MR. HOSECK: The objection, as I understand it, is that this is of a confidential nature. It calls for an answer and release of confidential information. As counsel for U S West has indicated, this may be delayed at a future point in time from a different source and perhaps under confidentiality protection.

1 14 That's the case, then we will address that situatio  
2 15 at that time. However, right now I'm going to sustain  
3 16 the objection.

4 MS. CREMER: Then I would ask counsel,  
5 17 Mr. Ritter, would your client be willing to submit that  
6 18 as a late-filed confidential exhibit?

7 MR. RITER: Well, as Mr. Welk indicated,  
8 19 apparently he already has that information that he  
9 20 intends to offer it at later time by way of at least a  
10 21 showing of proof or something; and we can remedy that at  
11 22 that time. I'm not going to agree at this time that I  
12 23 believe that that distinction is relevant because I  
13 24 think my argument is still we're looking at the  
14 25 consumer in South Dakota and what he or she are going  
15 26 to have to experience by way of this rate increase.

16 MR. HOSECK: Counsel for staff, if you're  
17 27 moving to have this filed as a late-filed exhibit, at  
18 28 this point in time I will reserve ruling on the  
19 29 late-filed aspect of this until such time as U S West  
20 30 has had the opportunity to present the evidence as has  
21 31 been represented by their counsel. And at that point  
22 32 in time I'll make a ruling on it. But right now as to  
23 33 whether or not Mr. Thurman has to furnish this as a  
24 34 late-filed exhibit, we will just put off for a while  
25 35 and see if it comes in the record in another manner.

MS. CREMER: Works for me.

Q. Mr. Thurman, has your company ever intervened in a docket raising any other switched access charge before? Let me try that again. Has your company ever intervened in any other switched access docket before?

A. I don't believe so.

Q. And why is that?

A. Well, if you would refer to the other local exchange companies around the state that would file to increased rates, in most cases I would think our decision not to would be based on economics. It costs money to intervene and hire attorneys, et cetera, et cetera; and in any one particular independent LEC, it's probably not cost justified.

Q. Does your company have statewide averaged rates?

A. We have different rates depending on the location. We have mainly a different rate for non U S locations.

Q. Do you have route specific rates?

A. No.

Q. Volume discount plans?

A. Very limited.

Q. Did your company submit any data requests to

Q. What for this phase of the docket?

A. FirstTel did not.

Q. And why is that?

A. In working with or through the TAG association or coalition, we did divide up those responsibilities. And that part of it to get additional detail was, I guess, left up to Mr. Noonan at TeleTech.

Q. What was your responsibility?

A. Ours was to gather certain statistical information from the adjacent states and provide that to our consultant.

Q. How many residential customers do you serve?

A. Virtually none.

Q. But more than none?

A. We probably have maybe -- just incidental to doing a business, we may have some of the business owners' residences, so maybe a hundred.

Q. What switched access rate are you currently paying?

A. You mean what is the rate we're paying?

Q. Right.

A. Our bills are at 6.4.

Q. Six point?

A. Four.

Q And that was effective when?

A I believe it was July 12th.

Q Has it had an impact yet on your company?

A Oh, yes, it shows up on the financial

statements.

Q Have you done anything about that yet?

A No. We're hoping we're going to get it

refunded.

Q So that the point -- actually you haven't had an impact that you haven't had to reduce services or --

A We've had an impact, but we haven't reduced services and we haven't raised prices.

Q Okay. You didn't state earlier but Mr. Simmons stated that you've done audits in the past. Is that correct?

A I think he was referring to the fact that Mr. Noonan has been to Omaha on previous occasions and I don't know if you want to call it audited, but reviewed and examined information.

Q But have you?

A I have not.

Q Okay. Are you advocating a phased-in rate?

A If I had to make a choice of taking it all at once or phasing it in, I certainly would.

Q And you understand Mr. Rislov's argument

...that if there is a phase-in, that the revenue  
... has forgone, but is actually calculated into the  
... year or added in and there is interest on that?

MR. RITER: What's the question? I object.  
I don't think it's a proper question.

MS. CREMER: I asked if he understood  
... Slovic's argument yesterday.

MR. TIESZEN: I'm going to object because it  
... is a misstatement of law.

MR. NOSECK: Sustained.

Q You said you have reviewed the rules, the  
... access rules; is that correct?

A It's been a while. Yes.

Q But you have reviewed them? Is there a  
... rule or rules that you believe U S West did  
... properly apply in determining its switched access  
... study?

A Not that I know of.

Q Do you think the inputs are unreliable?

A I don't have a basis for or opinion on that.

Q Do you believe -- you said before that you  
... unfamiliar with the model. Have you done anything  
... increase your understanding of that model?

A In a general way I have by discussions with  
... Noonan.

Q Do you believe the model is suspect?

A I believe it is suspect simply because of the

result.

Q And that's the why part because you don't

see the result?

A I just don't understand how that could be the

result.

Q Okay. But you haven't done anything to

re-examine yourself any more with the model to try to

understand how that might kick out that result?

A Yes, I have. I've talked to and reviewed the

work that Mr. Noonan did and the results that he

calculated.

Q Is Mr. Noonan an expert on this model as far

as you know?

A He seems to be in my opinion.

Q Do you know, did he have any input in putting

this model together?

A I don't know if he did.

Q I'll ask him that. On page two of your --

let me see what number it is. Of Exhibit 34, line 22.

A Yes.

Q And did you tell your counsel that you had

corrections, or were there any corrections to your

testimony? Okay. On line 22, wouldn't that be



rather than interstate or not?

A. You are correct.

Q. Okay.

MR. RITER: We would move to amend the  
presented testimony accordingly.

MR. ROSECK: Granted.

Q. And then on page four you state that the rate  
is not in the public interests. That's in lines 19  
through 23. And we may have already covered this. Do  
you believe the cost study is inaccurate?

A. That's kind of general.

Q. Okay. Grossly inaccurate?

A. No, that's not what I meant. I guess I don't  
know.

Q. Okay. And you haven't done any sort of  
examination of staff's cost study; is that right?

A. I personally have not.

Q. Okay. Do you believe this Commission has a  
responsibility to allow U S West an opportunity to  
recover its noncompetitive costs?

A. Yes.

Q. And that being the case, then, what customers  
should bear the costs that you don't feel you should  
pay in this docket?

A. I don't think we've said that if those are

Q So if that cost study is found to be -- you  
are going to start paying more than our share of those.

Q So if that cost study is found to be -- you  
haven't sought -- from my understanding, you haven't  
looked at the cost study to prove that it's not  
correct, then, you feel the 6.4 -- or staff's 6.09 is  
the appropriate rate and you should pay that?

A No, I didn't say that.

Q Okay. Then what are you saying?

A I'm saying that I didn't review it  
personally, but based upon my discussions with  
Mr. Noonan, I do not believe it's correct.

Q But you don't know why it's wrong. And I  
would have to ask that of Mr. Noonan?

A Well, I could get into this a little bit. I  
think maybe I need to. When I went through those  
discussions with Mr. Noonan, it didn't make any sense  
for me to spend the hours and hours and hours that he  
spent on it. And in general, my training is to look at  
this kind of a financial information more in a general  
view and whether it makes sense or not.

A lot of the discussion yesterday was  
confusing, and one of the reasons it's confusing is  
because U S West is a large, complex organization with  
many segments. And that's where we can run into a

because then when there are segmented business operations, you have to allocate costs.

And my overall review of this was in that respect. There's total revenues in South Dakota. There's total costs related to South Dakota. And when you look at this in the big picture, the overall picture, it would indicate that over all, there's more than enough revenue right now to cover the costs, total costs, without an increase. Now, in my mind, that tells there's something wrong somewhere. And you can get into the details with Mr. Noonan on that.

Q Are you suggesting a rate to this Commission?

A Based upon my previous comment, I would suggest that there is not a rate increase needed.

Q So the rate you're suggesting is 3.14?

A That's correct.

Q And that's based upon what?

A The review I just mentioned.

Q But no statute or rule that you can cite to?

A Well, there's a statute that if there are unrecouped costs, they have the right to pass them through and be covered by revenues. And I'm just saying overall they're being covered by revenues.

Q Did you put your rebuttal testimony in?

A Yes.

Q If you would, go to page one of your rebuttal testimony. And you talk about your company is working with plans for facilities with that

A Yes.

Q What facilities would that be?

A When I say that, that doesn't necessarily mean we're going to build facilities ourselves. We are going to in some manner provide for an alternative for alternative facilities, being network switching, network that might be, in a form of a strategic alliance, association, coalitions, whatever it might be. Obviously, it's very expensive to provide those facilities and we would not be able to do that alone.

And we most likely would reserve that final decision to proceed in any manner until we see what the discounts are, the discounts that we would receive, the cost for unbundled services would be from purchasing from U S West, or what the ultimate discounts would be over time that we would receive as a reseller from U S West.

So, you know, we can't say for sure now how that will go, but it will be an economic decision. And assuming right now that through coalitions, et cetera, we'll be able to reduce those costs and be more

repetitive.

Q I'm not sure you answered the question but I move to page two, lines two through ten. In response to the question you've asked yourself, you're talking about facilities. Are you talking about loop back facilities in that answer?

A You mean like fiber rings around communities. A local loop you're talking about?

Q Yes.

A They would enter into it.

Q Okay. And then on lines 14 through 16 you talk about that the rate would not be in the public interest. It would impact competition. Is the competition referred to primarily resale?

A Not necessarily.

Q Then can I ask what? Can you give me a list of examples of facilities based competition and to what extent you're going to become independent of U S West?

A I'm a little bit lost. Are you referring to my comments at the end of --

Q On lines 14 through 16 you say it will severely impact competition thereby reducing opportunities for new innovative procedures and construction of new facilities. And you said you weren't talking about resale, so then my question is,

Q Now, can you list an example of facilities based on competition?

A Okay. If the rate doesn't go into effect, or I don't know if it's in effect or not, but anyway, and our costs don't go up, we have more funds available to be used towards building out facilities or at least sharing the costs of building out facilities with a partner or whatever. So we would be more likely -- we would proceed in that direction. Without that ability, any one of us or any one competitor could lack that initiative or that ability even to proceed to provide competitive facilities.

MS. CREMER: I don't have any further questions.

MR. HOSECK: Sprint?

MR. TIESZEN: No questions.

MR. HOSECK: MCI?

MR. GERDES: No questions.

MR. HOSECK: AT&T?

MR. LOVALD: No questions.

MR. HOSECK: Dakota?

MR. MARMET: No questions.

MR. HOSECK: Let's see, there would probably be any redirect?

MR. RITER: No.

MR. HOSECK: Okay. Commissioners.

COMMISSIONER NELSON: I had a couple. Would you say that part of the reason that you haven't either reduced your rates or increased your rates or reduced your services because you're hoping that the Commission would set a lower rate and you would get the costs that you've paid thus far refunded?

A That would be part of it. The other part is that we are trying to reduce costs other places so that we can possibly offset part of it.

COMMISSIONER NELSON: Did you say access from states is higher than you were paying to U S West; is that right?

A Independent telephone companies are generally correct, that's true.

COMMISSIONER NELSON: Would you say that if that rate was higher in other states, that your rate that you're charging in those other states is also higher?

A Yes.

COMMISSIONER NELSON: And that's partly because of the higher rates that you have to pay there?

A The higher access rates, our retail rates would be.

COMMISSIONER NELSON: Thank you.

COMMISSIONER SCHOENFELDER: Mr. Thurman, I think you've answered most of my questions that I had asked Mr. Riter I was going to ask you about the facilities. I just have a clarification question about what you said that you were investing in or you were going to put -- to use switches, and you sort of indicated, I believe, to Ms. Cremer that facilities based competition might be -- and I'm not trying to put words in anyone's mouth, but that's sort of the way I hear it. Facilities based competition might mean that you had a switch, and/or only a switch and then you went on to discuss, not in great detail, but to say that you had considered, you know, outside plant or fiber in the ground or something like that. But just to clarify, usually when I think of a reseller, I think of a switched reseller or a switchless reseller. But facilities based to me, even though switches are telecom facilities, in my opinion facilities based, to me, would mean a combination of switches and loops. Are we on the same wavelength or not?

A. Yes, we are.

COMMISSIONER SCHOENFELDER: Okay. Have you ever asked U S West for interconnection or collocation?

A. Well, interconnection, we have our interconnection agreements with them in six states.



COMMISSIONER SCHOENFELDER: Okay. And I don't remember whether you have one here or not.

A. Yes.

COMMISSIONER SCHOENFELDER: And you have applied for local service here?

A. We're providing local service here.

COMMISSIONER SCHOENFELDER: Okay. Do you plan on residential service, or do you do that?

A. We have that in our longer range plans, yes.

COMMISSIONER SCHOENFELDER: Okay. When you discussed with several people the rates that you pay independent companies, that be cooperative small companies, I think in South Dakota we tend to say the MCA companies, plus Dakota and some other small companies, has the trend in the intrastate switched access rate been up or down?

A. As these companies, as you refer to them, the MCA companies and Dakota, have changed to equal access, then the rates went up a fair amount, obviously, to recover their costs of becoming capable of doing equal access. Other than the increase under that situation, I don't believe there's been very much of an increase.

COMMISSIONER SCHOENFELDER: Do you know what the trend is nationally for switched access

interstate? Mr. Heaston just said a little while ago that interstate is going down and we know that. What about intrastate switched access nationwide, or where you do business?

A. My understanding nationwide is in general it's going down. And our expense, for example, in Minnesota, it is going down. And I believe -- I'm not sure I was thinking it went down some in Iowa, but I'm not sure. But I know it has gone down some in Minnesota.

COMMISSIONER SCHOENFELDER: Does that usually tend to reflect the trend in technology that's deployed over the faster, better technology forces those rates down? Are the costs going down to the intrastate switched access providers, is that reflected in other areas. In other jurisdictions?

A. We belong to, you know, national associations; and it's my understanding from the information we get from them that generally it is going down. I'm not sure about the real reason for that. I think maybe from what information that we get from those associations is that these -- at least partly in identifying where those costs should really be supported to maybe it's somewhat from lowering of costs because of technology and things. And the broader the

customer base obviously, the less you need from each of  
 those. So that might be part of it in sheer volume.  
 I think the other is determining where those costs  
 really lie, and supposedly not as much of them belong  
 in a switched access cost area.

COMMISSIONER SCHOENFELDER: Thank you.

CHAIRMAN BURG: What is the rate -- how many  
 states did you say you do business in?

A. Six.

CHAIRMAN BURG: What is the rate -- I know  
 we've indicated in Minnesota, Iowa, and Nebraska. What  
 is the switched access rate in those states, do you  
 know for U S West?

A. I don't know most of them off my head. I  
 know in Minnesota, at least in some areas, it's around  
 one cent for interstate.

CHAIRMAN BURG: Interstate?

A. Uh-huh.

CHAIRMAN BURG: What's intrastate?

A. I don't know that.

CHAIRMAN BURG: We're talking about intra.

MR. WELK: Dr. Wilcox has that information if  
 you'd like it.

CHAIRMAN BURG: Yes. And are you familiar  
 with the rules in other states? Are they similar what

... what we're using in South Dakota?

A We haven't participated in switched access  
... so I'm really not.

CHAIRMAN BURG: I think that answers the  
... I had.

MS. CREMER: I would just point out that  
... are North Dakota's rates. We've had that  
...

CHAIRMAN BURG: I didn't ask North Dakota.

MS. CREMER: Okay.

MR. ROSECK: Mr. Thurman, I have one  
... And that is previously you testified along  
... that based on an analysis that you did at the  
... switched access rate, that U S West had  
... revenues to cover costs and then went on to  
... further about that. The question that I would  
... in this general sense, in doing your analysis of  
... what did you review? What did you look at?

A I looked at documents that Mr. Noonan had  
... and I believe they were the -- I guess I'd  
... summarized financial information of U S West  
... the various sources of revenues and related  
... by those categories, and I think they were for  
... and '96, I believe. And you had, then, the  
... on the minutes, of the total minutes

1 received. and the breakdown between U S West and  
 2 ~~these~~ And then how that all related to each other  
 3 ~~and the~~ fact that with the old access rates there was  
 4 ~~the~~ total revenues were more than enough to cover the  
 5 ~~these~~

6 MR. HOSECK: Thank you. Does this prompt any  
 7 ~~any~~ cross-examination of this witness?

8 MR. HEASTON: No further cross. But in  
 9 ~~response~~ to the questions by Commissioner Schoenfelder  
 10 ~~concerning~~ the trend in costs, I would ask the  
 11 ~~Commissioner~~ to take official notice of the docket that  
 12 ~~exists~~ in Docket 93-108 which show that U S West  
 13 ~~access~~ costs were in excess of 6.7 cents and that this  
 14 ~~figure~~ is in the 6.4 cent range, which indicates a  
 15 ~~rate~~ downward.

16 MR. GERDES: Mr. Hearing Examiner, I'd object  
 17 ~~to this~~ We're talking about something that happened  
 18 ~~years~~ ago and it would have no relevance to this  
 19 ~~issue~~

20 MR. HOSECK: The objection is sustained. The  
 21 ~~statement~~ from counsel from U S West would be stricken  
 22 ~~from~~ the record.

23 COMMISSIONER NELSON: Mr. Hearing Officer, I  
 24 ~~have~~ one more question I forgot. Generally speaking,  
 25 ~~you~~ said that you thought your rates you were paying

I'm still trying to operate under at 3.14.

MR. HOSECK: Any further questions of this

if not, he may be excused.

I guess we're looking at a timing situation

Do we break at this point in time and come back

early? What would be the opinion?

MR. RITER: We're going to call Mr. Noonan as

witness, and it might be smoother if we had it

once.

MR. HOSECK: We'll reconvene at a quarter to

(AT THIS TIME THE NOON RECESS WAS TAKEN.)

MR. HOSECK: We'll go back on the record at

Mr. Riter, go ahead and call your next

MR. RITER: Thank you. We'd call Jerry

JERRY NOONAN,

called as a witness, being first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

MR. RITER:

Q Please state your name and business address.

A My name is Jerry Noonan. I'm located in

Valle, South Dakota.

Q All right. Have you filed prefiled testimony in this matter?

A Yes, I have.

Q And is that before you as Exhibit 35?

A Yes.

Q Can you identify that as Exhibit 35?

A Yes, that is my prefiled testimony.

Q And if you were asked those questions today, would you give those same answers?

A Yes, for the exception of corrections I would make on line 34 regarding long  
~~the~~

Q Which page?

A I'm sorry, page four, line 34, regarding long  
~~the~~ network revenue, which should reflect an  
~~the~~ of the sale of exchanges for about  
~~the~~ 000, or that figure should be 30,173,045.

Q Other than that change, are there any other  
~~the~~ that appear appropriate to your testimony?

A No.

MR. RITER: We would offer Exhibit 35.

MR. HOSECK: Any objection?

MR. WELK: Yes, Mr. Hearing Officer, U S West  
~~the~~ an objection. I would ask permission of the

Hearing Officer for a couple questions of voir dire  
where the objection is on the record.

MR. HOSECK: Proceed.

MR. WELK: Mr. Noonan, what has been marked  
as Exhibit 35 is your testimony regarding the  
development of a switched access rate that you propose  
in this proceeding; is that correct?

A. It proposes a review of the switched access

MR. WELK: And it proposes a different  
methodology, does it not, in calculating a switched  
access rate other than what's provided by the rules of  
the Commission?

A. I don't believe so.

MR. WELK: Your testimony is that these  
assumptions that you've put in your testimony are  
consistent with the cost model that's been promulgated  
by the Commission's rules?

A. I believe if you'll let me finish the  
testimony, I believe that will be true.

MR. WELK: I'm going to object on the grounds  
that testimony from page one, line 17, to page six, line  
and all Exhibits A to H, on the grounds that it  
seeks if you review the testimony, it seeks to  
make a calculation as to a rate that's found on page



line 12, and describes that methodology; and that it is not consistent with the Commission's rule, nor with the cost model that's been the subject of this proceeding.

MR. RITER: If I might reply?

MR. HOSECK: Certainly.

MR. RITER: Mr. Noonan's testimony will relate to what he believes is a fair and reasonable rate. That is the statutory analysis that ultimately is required in this action. Now, I understand Mr. Noonan's situation and his claim that reaching beyond the cost model is not proper. But we would argue that, in fact -- the Commission can, in fact, look beyond the cost model. They can look to what's fair and reasonable.

Additionally, under ARSD 20:10:27:02 the Commission may waive or suspend for good cause any rule in Chapters 27 through 29. And we suggest that this is offered with the intent and the opportunity that the Commission can either waive the rules or else they can look at what's fairly and reasonable as an alternative that Mr. Noonan is providing.

Additionally, that his testimony relates to criticism to some extent of the ultimate percentage of the ultimate sense that the formula creates relative

to issues on costs and revenue.

MR. HOSECK: I'm going to overrule the objection and with this proviso: That the overruling of the objection is not in any way to be construed as an act of the Commission whether it waives any provisions of the rules or does not waive any provisions of the rules. And that if you want to approach this situation, Mr. Welk, through cross-examination, you're welcome to do so.

MR. WELK: Thank you.

MR. HOSECK: And are there any other objections to the admission of this? There being none, it will be admitted.

MR. RITER: Thank you.

Q. Mr. Noonan, in preparation for your -- let me go back a moment. Would you please tell the Commission a little bit about your experience? We know you're a certified public accountant. Would you tell them a little bit about your past work experience?

A. Well, I've been practicing public accounting for thirty-some years. I've been actively involved in the last ten years with the overseeing of the operations of TeleTech, which is a South Dakota based reseller. And I have been actively involved in doing auditing reviews and compilations in my practice. And

the work that I've done has been in connection with the experience I've had in those areas.

Q. And the analysis that you used in this case, was it similar in nature and kind to the analysis that you've used in other situations of a comparable nature?

A. I would say as it would relate to -- for example, in the auditing business you do need to reach an understanding of a system and some of the flow of information in order to kind of make a review of whether or not transactions flow into a given system correctly.

Q. And as part of the process in this particular case of gathering information upon which you relied in your opinion, what did you do?

A. In addition to the information that I provided in the direct testimony, which I indicated to be the purpose of my testimony was to offer some exhibits and some testimony related to the review of various documents and information that I was able to obtain from public records and other pertinent financial information that I used to reach a conclusion or a review of various matters regarding those documents.

Q. But what in particular did you do? Did you review any other documents other than public records? What did you do as far as trying to discover the

information you thought appropriate?

A. Well, first of all, prior to the time that I made a visit to the Omaha office of U S West, I had spent a considerable number of hours analyzing the cost model and trying to understand how that cost model worked. I first started off when probably a year ago I asked Mr. Best for a computer printout, or basically a Lotus spreadsheet that contained the entire cost model. He supplied me with that particular cost model with everything zeroed out, and I was able to with that determine the flow of various types of information by just dumping in some amounts into the model and just watching it calculate. And so I got a feel for what was contained in the cost model without regards to any data that was inputted.

Subsequent to that, Mr. Best forwarded to me -- and I don't remember exactly when -- a complete run of the cost model. And I believe that first cost model was somewhere -- I think I referred to the dates in there. It was one of the first or second runs that took place. And so I used that information somewhat to make my initial evaluation and review of how this particular cost model worked. And I was told that that model complemented the regulations as they were set forth and put in place in the South Dakota rules and

regulations. I never made any attempt to  
reference those specific calculations or formulae  
Harlan Best indicated they are. And they are just  
that, because they are nothing more than formulae that  
have been entered into that are implementing the rules  
and regulations as understood and documented in, I  
believe, this document right here.

Q. Well, then I'm interrupting you a little bit  
but rather than a narrative, we'll try to ask a couple  
more questions then. You talked about going to Omaha  
what did you do down there?

A. I was able to -- I arrived in Omaha a little  
later, and they were already in a teleconference  
call. I had in my particular mindset that based on a  
review of the model itself and the review of the annual  
report of U S West, that in my mind I had convinced  
myself in the review process that there was a direct  
relationship between the amount of access lines that  
were in South Dakota and the amount of total access  
lines there was in the U S West group, which was about  
4,047,000 access lines in the entire system. So I  
translated that into approximately about 1.8 percent  
of the lines in the U S West group were actually  
physically located and working in South Dakota. So  
when I made my trip to Omaha, I was wanting to deal

with whether or not that seemed to be reasonable and correct. And in --

Q. What did you find out?

A. In a teleconferencing call, which I found to be a very nice exercise because much time was spent on the validation of the information that flows into the model, but I asked the question -- when I had about 10 minutes of that, I asked Mr. Bill Curtis from the corporate office, I said, based on all of the reports that are taking place, does anyone up above -- I mean higher up within the corporate accounting office -- does anyone do a reasonableness test of all of the flow of the cost information which flows into the model? And the response -- and I wish I could have remembered the exact words he used, but it was something to the effect that, yes, we do. It's approximately two percent.

Q. What did that mean to you?

A. That meant to me that two percent of the revenue coming from -- two percent of the gross revenue from the entire U S West group was looked for and was to come out of South Dakota. And when you translate that times the 9.484 billion dollars that are set forth in the '95 annual report, you get remarkably close to the revenue that is being generated in South Dakota to that particular number. So --

Q. When you say close to it, with or without the increase that they sought herein?

A. Without the increase.

Q. Go ahead.

A. So that only made sense to me. And if you look in my testimony, that's why I spent a considerable amount of time reviewing how much revenue was being generated by access lines within the state of South Dakota. Because Mr. Curtis had confirmed and it came to me that based upon all of the inputs that were there -- I mean, I looked at a four by eight sheet of cost pockets. I'll call them cost pockets. Basically ledger accounts that the program of U S West draws upon to collect and compute cost which will go into the South Dakota ledger. Mr. Culp verified for me that that was reasonably correct except for direct cost. So that in my own mind I have at least satisfied myself that in the cost -- in the expenses of the cost model that's being used in South Dakota consists of direct costs which are directly allocable to South Dakota. And there also are a considerable bundle of costs which are allocable and are not direct costs into the U S West model.

Q. Is that the allocable cost, is that where you come up with the 1.8 percent or the two percent are

allocated to South Dakota?

A. I did not come up with that, but if you take the information contained in the model, you come approximately to that particular figure. Now, I don't have a problem with that. I just have a problem with the way the calculation grinds through the cost model. Mr. Best, I think, has indicated in his testimony that the computer just does it and nobody necessarily understands what the computer does. And I think we can only review that model based upon what comes out of it and say to ourselves, is this reasonable under the circumstances? And that's all I'm attempting to try to do today is explain to this Commission what appears to me to be reasonable under the circumstances of what's been generated through this model.

Q. Thank you. To best illustrate your testimony this afternoon, did you prepare on the easel some figures so you could use those, or talk me through those when you're explaining what you discovered?

A. Yes. And I want to -- before I show that, I want to indicate where some of these bits of information or this summary is coming from.

Q. All right. Where did you receive it? Where did you find it?

A. All right. First of all, Harlan Best in his



test run, which is dated August 27th of 1997 and was  
attached to his particular exhibit, or his particular  
direct testimony, which can be found on Schedule B,  
which is the final run, which in order to get this  
same rate that we're all talking about, shows that  
there are two elements. There are the intraLATA  
element, the interLATA element, and we have three  
components which is basically column D. And if you've  
got the sheet, it would be helpful because the numbers  
want to mess everybody up. But Sheet D.

CHAIRMAN BURG: Which document is that?

A. That is in Harlan Best's direct testimony.

Q It would be Exhibit 38, Sheet A, which is  
attached to it.

A. If you continue on, if you take column D,  
column E and column G, and you add up the total revenue  
requirements -- and I want to clarify revenue  
requirements, if I can, because it's been most a  
misleading concept that I've ever dealt with in  
public accounting.

But the easiest way I can describe the  
revenue requirement is this: When you take profit on  
an investment, you have got -- that is your bottom  
line. That is what you want to put in the bank, so to  
speak. To that you add up all of your expenses, all of

expenses, and then you come up with revenue. So when I speak of revenue and I speak of cost, they are synonymous in the rate making process that we're looking at in the cost model. So if I say cost, I mean revenue. If I say revenue, I can also mean cost. Because in cost is imputed -- or it is included in rates, which is a concept that I've had a tough time with. But when we talk about cost, it already has revenue in it, if I understand it correct. And I certainly can be corrected on that, but everything in the model would indicate that is the case.

Q. Well, for instance, Mr. Noonan, if you look at page 10, it talks about return on rate base. Is that part of the return that you've been talking about?

A. That is correct. If you add that backwards, and this is just upside down in relationship to conventional accounting -- we always on every financial statement start with revenue first. We subtract expenses, we subtract taxes, and we come up with a net income. This is an upside down financial statement.

Q. Now, when Mr. Best testified earlier, he indicated that the total intrastate revenue requirement by a combination of columns D, E, and G would be about \$1 million dollars. Is that what you determined?

A You're referring to -- let's take the two elements. The intraLATA portion is 16.7 million. To that you must add the interLATA, which is on line 41. That is another 10.4 million dollar revenue requirement, or expressed another way, total expenses including profit. So the total intrastate revenue requirement, total for the two elements or two elements, is 27.1 million dollars.

Q And what is used to generate that necessary revenue requirement?

A Well, now, if I can, before I do that I want to identify for you how I arrived at minutes of use. Because that's an important element because I'm going to be working with two factors here. The total revenue requirement, or total cost, whichever terminology you'd like to use, divided by the total number of minutes that have been switched. And if you'll look down below, Mr. Best has identified 445 million minutes of use. Within the 445 million includes what we as IXC's exchange, which is about 166 million minutes.

Now, how did I arrive at that? I was given a report by U S West under proprietary agreement or proprietary notice of nondisclosure, which I believe we have the total minutes. And it's included in my testimony found on Exhibit F-2 of my direct testimony.

Q : Have -- in what I'm going to be showing you, I have adjusted for the minute use that Mr. Best and his staff found in total or adjustments that needed to be made. I did not adjust the carrier exchange minutes.

A So with that I would like to show you my exhibit. This represents a schedule whereby I have taken the total minutes of 445.5 million, I have broken it into two segments, the segment which is U S West's segment and --

MR. WELK: One question: Is this in his testimony in this format?

MR. RITER: In this particular format?

A It is not.

MR. RITER: This is a summary of his testimony.

MR. WELK: Are you representing to me, Mr. Riter, that all of that information is contained in your testimony?

A Yes. Well, no, it would not.

MR. WELK: I object, because I didn't find it and it's not part of what's attached as an exhibit. And I move it be stricken because it's not consistent with his prefiled testimony.

MR. RITER: If I might reply, it's certainly part of the overall information that was provided

1 either in Mr. Best's testimony -- or, I believe, 2  
3 and in Mr. Best's testimony or Mr. Culp's testimony 4  
5 or Mr. Noonan's testimony. I don't think it's 6  
7 I should ask him that. May I ask a question for 8  
9 purposes --

10 MR. HOSECK: Certainly.

11 Q. Mr. Noonan, is there information on these 12  
13 that's not included in any of the attachments to your 14  
15 or Mr. Best's or Mr. Culp's testimony?

16 A. There is nothing here that could not be found 17  
18 in the exhibits for the exception of the actual 19  
20 calculation of taking something times something to get 21  
22 the results.

23 MR. RITER: All right. Well, then we would 24  
25 resist the objection upon that basis.

26 MR. WELK: I would like to respond. The 27  
28 purpose of filing prefiled testimony, especially when 29  
30 highly technical in nature such as this, is to give us 31  
32 an opportunity to talk with our experts and to be able 33  
34 to cross-examine. This is not a summary that was in 35  
36 his testimony. It may be scattered throughout, but the 37  
38 purpose of filing prefiled testimony is to give us 39  
40 adequate time to be able to cross-examine. And he's 41  
42 represented it's in other testimony but not in his 43  
44 summary, so I continue my objection. And otherwise I'm 45

going to have to have a continuance to consult with my experts to see this because I can't properly cross-examine.

MR. HOSECK: Well, the objection will be overruled and you can proceed with your questioning, Mr. Riter.

MR. RITER: Thank you.

Q. Mr. Noonan, going on then, you've talked about the total minutes and the division between C West and the interexchange carrier. Carrying that forward, what did you do?

A. Well, here again, all you need to do is take Mr. Best's numbers of 445.5 million, take the figure in my exhibit of 166.5, subtract the difference. And you get the 279. Then his CCL calculation is set forthright in his exhibit. It's just combined together. And all I'm trying to do is pull this apart for purposes of understanding of how this total came. And --

Q. And when you say it's in his testimony, you're referring to Sheet A?

A. That's correct.

Q. Go ahead.

A. In that when you break that down, the components that he's arrived at for the CCL represents

10.9 million. For U S West it represents 6.5. For the exchange companies the local switching is 2.4 million, and 1.4 for the exchange companies. Common transport is 0.7, and it's 2.2 for the exchange.

Q. Let me interrupt you a moment. Now, when you say it is, what formula or what percentage did you use to split this between U S West and the IXC?

A. I simply took the minutes of use times the rate that we have been quoting here as 6.0905, which is what the Commission has arrived at.

Q. Thank you.

A. Now, this is where it gets interesting because in the cost model Mr. Culp talked about revenue, and I believe he stated that the cost model should approximate the actual revenue received for that category. In other words, it was represented to me that revenue is not an allocated amount. Revenue is an actual amount. In other words, it goes directly into the ledger. So I'm assuming that the reports that are received by the Public Utilities Commission are reasonably accurate as to the income amounts.

And if you go to the public report that has been issued to the Public Utilities Commission, you will find that you can identify 34.3 million of revenue that can be identified with in the Public Utilities

commission report. I think it's called -- I can give you the title of that. It is my Exhibit G. From that I understand from Mr. Culp's testimony that I must subtract 55 exchanges that were sold and, therefore, that amount has to be adjusted for the sale of those exchanges.

However, if I sell 55 exchanges, we now -- of U S West would now experience an increase in its switched access revenue from those companies for which it sold to, and I have estimated that to be about a million dollars. From that I must subtract special access, which is also included in that portion of the revenue. So I can identify revenue streams of 10.7 million dollars, and I can identify IXC income projections at about 13.5.

Now, keep in mind -- and this is a very important concept, at least it is for me, to understand what's taking place. Of the 17 million dollar revenue requirement for U S West and the IXC revenue requirement, that has included in it certain CCL costs that are included in our 6.5 million dollars. Further, it includes an allocable amount of overhead that the model runs through for such things as the big three costs such things as planning and allocation of corporate overhead. And as I mentioned in my



Testimony, I couldn't quite understand where we began even that but I understand the model cranks it out. But in coming up with a fair and reasonable rate, I believe the Commission should look at those allocators and see whether or not that gives us a fair and reasonable rate.

Q. And does that exhibit or that first page that you've spoken of, does it include on the U S West category the rate of return that we talked about earlier?

A. That is correct. In the 17 million dollars and I've extrapolated those figures. In that particular 17 million dollars, there is in the number a net profit of 2.483 million dollars. In the amount that has been extrapolated for the expenses, or the revenue, and in this case the expenses, there is a profit built into the 10.14 million of 1.482 million in our portion of those direct costs.

Q. A profit to whom?

A. A profit to U S West. And, as you can see, that is in fact the correct allocable cost, in my mind I cannot understand where there is more money due. Okay? And that leads me to the next part of it which is the famous word imputation. And of this, as you can see, that each one of the segments has borne

1 It's fair share of the cost that has been defined  
2 problem with all of this -- first of all, I would like  
3 to then show a number because I think this is  
4 significant, too, is that out of the 34.3 billions,  
5 let's look at the revenue per minute that U S West  
6 enjoys from the 279 million minutes. Then let's look  
7 at what the interexchange carriers enjoy, or what they  
8 enjoy from our switching of 166 million minutes.

9 Q. Let me ask you first, Mr. Noonan, the figure  
10 you just put on the board in the red, .1230, where does  
11 you get that?

12 A. That is arrived at by simply calculating the  
13 gross revenue that they show for 34.3 into their 279  
14 number of minutes that they have used the switched  
15 access system.

16 Q. All right. And then you've also made the  
17 computation for the IXC's?

18 A. That is correct.

19 Q. And what is that computation?

20 A. That computation is arrived at, again, by  
21 taking our interexchange carrier minutes where we  
22 access the system and divided it into the total revenue  
23 that I can identify that U S West has put onto their  
24 books or onto their ledgers. Now, the important  
25 concept here to remember -- and I'm sure Howard will

Help us out on this also. When we access the system as a reseller, we're not a one-ticket trip. We have to make two tickets, a round trip. So when we speak of 1.14 cents, or .0314, you have to think in terms of double your money because I have to pay for a round trip ticket if I don't have any access. If I don't have my own facilities or my own wire, then I've got to pay this. And it seems reasonable to me that that's what U S West is receiving.

Q. So every time that there is the access, it's really a get-on and get-off access, so it's going to be six cents the way it is right now, 6.28 rather than 6.14.

A. That is correct. If I originate a call in Mitchell, South Dakota, and I terminate it in a U S West -- let's say Watertown, I'm going to pay three cents in, I'm going to pay three cents out. Now, that's six cents. I'm not sure exactly the rate because we work in terms of radii, or how many miles are you transporting that. But suffice it to say, in our case it's always -- and for the exception of appropriate, it's always a two-way ticket.

Q. And what's the next calculation you did as part of your summary?

A. And I'm not so sure that this is as

significant, but we always kick around the word imputation and I wanted to at least illustrate that it doesn't really make any difference if you take the total minutes into our cost, or you take the total minutes into U S West's cost, you are going to end up with an imputation, or pulling out, or as we say in

I guess I best illustrate it imputation for the IRS is infamous for imputation. If I have \$100,000 interest-free loan on my books, and he doesn't like the fact I'm not charging interest, he does what is called an imputation. He reduces my \$100,000 note down to reflect interest and he says your note is really not \$100,000, it's really 94,000 and you have to pay tax on imputed income. That is imputation. From an accounting standpoint, we have talked about it.

But I was able last night actually to reconcile the two. It didn't make any difference whether I imputed the interexchange minutes or I reflected the amount of U S West minutes. The fact is I came out with the same results. There was 6.3 million dollars that was reflected in the calculation that somebody should be charged for. In other words, either you charge either in -- and this tries to illustrate that Either U S West reduces its revenue requirement and gives the interexchange carriers credit for it in

the form of revenue, or in the second calculation you  
and give us credit for a reduction in cost.

Now, if you take a reduction in cost, you  
certainly will not come up with a 6.09 rate. And  
the other thing I'm finding, at least, inconsistent, is  
and no place in this calculation where the exchange  
companies have been given any credit, any credit, for  
the CCL that's included in the 6.4 million dollars.

Now, my only question is why? And I may be  
misinterpreting the regulations, but there is a  
provision in the regulations which states in regulation  
10.10.29:11 it says -- and I don't know whether I'm  
interpreting this correct, but it says an interexchange  
carrier shall receive a credit -- that's a credit could  
be imputed also for carrier common line charges to the  
extent that it resells services for which these charges  
have already been assessed. I don't see where we  
should be doubly charged on such as message toll  
service or MTS type services of other common carriers.

So I see this issue we're dealing with is as  
there's another enough revenue. If I could  
summarize, there's enough revenue already in the  
industry to take care of the proposed increase. And I  
have a tough time understanding how we can talk about  
increases when there's sufficient amount of revenue in

1 the treasury now to accommodate 3.14 because it's  
2 double your money.

3 Q. One last question I would have then on the  
4 imputation. Would there be sufficient money in the  
5 treasury even without considering the imputation ought  
6 to be included?

7 A. In my mind there is. As you can see, if I've  
8 identified the revenue requirement, if the revenue  
9 requirement with profit built into it is 17 million  
10 dollars, I've identified at least 18.7 and that's  
11 already got 2.4 million in it. Now, I'm more than  
12 happy to argue this issue and I'd love to do that, but  
13 in order to do that, I believe we've got to get the  
14 revenue element, the actual revenue on the table.

15 Q. Mr. Noonan, does that complete your summary?

16 A. I think so.

17 Q. One additional question I would have of you  
18 then: Did you provide financial information to Howard  
19 Susskind from TeleTech for his use?

20 A. Yes, I did.

21 Q. Would you affirm to the Commission today that  
22 the information you provided him was accurate?

23 A. Yes.

24 MR. RITER: Okay. That's all I have. Thank  
25 you.

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MR. HOSECK: Cross-examination by U S West.

MR. WELK: Yes, Mr. Hearing Officer. I would request a short recess to consult with my experts based upon the information that's been provided in this summary.

MR. HOSECK: Granted. How much time would you deem desirable?

MR. WELK: Half an hour.

MR. HOSECK: It's granted. We'll recess about ten minutes after 2:00.

COMMISSIONER SCHOENFELDER: Mr. Welk, I need to let the parties know that I need to leave this afternoon at about 5:15. If everyone else agrees to stay to go later, I will read the record. But I have a couple things tonight. I have a meeting and another thing that I had arranged a long time ago. So I would just read the record if that's permissible. I will read the record. I'm not going to ask permission.

(AT THIS TIME A SHORT RECESS WAS TAKEN.)

MR. HOSECK: Tom, are you ready?

MR. WELK: Ready to proceed. Thank you, Commission and Hearing Officer.

CROSS-EXAMINATION

BY MR. WELK:

Q. Good afternoon, Mr. Noonan.

A Good afternoon.

Q. Mr. Noonan, the testimony that you provided today and the prefiled testimony that you filed in this case represents an approach that you took, I believe, in trying to determine an access rate in this case. Is that correct or not?

A. It was an alternative, yes, to try to find a reasonable approach to an access rate.

Q. And the approach that you described in your prefiled testimony and the approach that you described today in your testimony, that is inconsistent with the Commission's switched access rule; is that correct?

A. The one I just presented was consistent with the rules.

Q. This methodology that you have explained today you claim is consistent with the cost model provided for in the Commission's switched access rules? Is that your testimony?

A. Let me back up. What I mean by that is that we have taken the existing numbers and for the purposes of segmentation, which I agree the segmentation of the revenue into two columns is, to my knowledge, I don't know whether it's in the rules or not.

Q. So you've taken bits and pieces of the model's result and some of the inputs and adopted a new



methodology; is that correct?

A. A new methodology? It seems like it's inclusive thereof of the methodology. It's a part of the methodology.

Q. But you have added different calculations. You've added a different approach than what is provided in the switched access rules in regard to your testimony today; isn't that correct?

A. I don't know whether I did or not because I have not studied each individual rule, as I said before.

Q. The methodology that you described in your profiled testimony, you would agree, is not a methodology that's recognized by the switched access rules currently existing at this time that have been promulgated by the Commission; is that correct?

A. As I indicated, since I'm not totally familiar with every segment of those regulations, in how the formulae in the model itself relate to the regulations or implement them, I could not conclude on that.

Q. Would you agree with me that the model that has been used by the staff and U S West is a cost model; is that correct?

A. As I said before, cost and revenue are two

1 same. So in answer to your question, yes. It's a cost  
2 model.

3 Q. Is there any provision in the model that has  
4 been utilized by the staff and U S West for a  
5 consideration of revenues?

6 A. Well, yes, as I indicated, because the model  
7 calculates a revenue requirement.

8 Q. That is the ultimate calculation of the cost  
9 model is to create a revenue requirement, is that  
10 correct?

11 A. That's correct.

12 Q. But in the components of the cost model are  
13 revenues utilized?

14 A. They should be comparable. As Mr. Culp said,  
15 they should be comparable.

16 Q. What do you mean by the word comparable? Are  
17 same numbers?

18 A. Meaning they should be close to the same  
19 numbers as the actual. That's what I understood  
20 Mr. Culp to say.

21 Q. Well, I'm just trying to ask is the  
22 methodology that you have proposed in your testimony  
23 and what you have testified today, has that ever been  
24 adopted, as far as you know, as a methodology by the  
25 Commission?

1 A. No.

2 Q. Has it been adopted, in your opinion, in any  
3 other docket that has dealt with switched access in  
4 this state?

5 A. No, I wouldn't know.

6 Q. Has it ever been adopted as the methodology  
7 you've described today in your prefiled testimony even  
8 adopted by any regulatory Commission, state or federal?

9 A. No.

10 Q. Have you, prior to your involvement as a  
11 party in this action, had any familiarity with the FCC  
12 separations process?

13 A. No.

14 Q. Prior to your involvement in this action as  
15 you as a CPA, have you ever audited a  
16 telecommunications company, even your own?

17 A. No.

18 Q. Have you ever reviewed the FCC rules and  
19 regulations regarding separations prior to this action?

20 A. No.

21 Q. Have you reviewed them in connection with  
22 this docket?

23 A. No.

24 Q. So you haven't even looked at any FCC rules,  
25 all of the parts that we've talked about in this action?

1 proceeding, both back in October and today, you've  
2 never reviewed any of those FCC rules; is that correct?

3 A. That would be correct.

4 Q. Now, I want to go a little bit -- you talk  
5 about Omaha. You went down there and you said that you  
6 went down there, you had a mindset about U S West; and  
7 what this South Dakota operations was in comparison to  
8 its total company operations?

9 A. I would say a mindset is probably, you know,  
10 a correct word. I had done enough calculations at that  
11 particular point in time that I felt that I needed to  
12 get an answer on something of that nature.

13 Q. When you went to Omaha you stayed less than  
14 one day; is that correct?

15 A. That's correct.

16 Q. Did you review any of the responses by U S  
17 West to any of the data requests that were requested by  
18 the staff?

19 A. I'm sorry, did you say U S West data  
20 requests.

21 Q. I'll start over. Have you at any time  
22 reviewed the documents that were provided by U S West  
23 to the staff pursuant -- there are 107 data requests.

24 A. No.

25 Q. When you left Omaha did you take any

1 documents with you?

2 A. I think I took the documents that were  
3 basically pie charts and some payroll information  
4 regarding the direct costs and some -- I don't believe  
5 the allocable cost, but some of the direct costs that  
6 were put into the model, along with some flow charts on  
7 how it fed into the cost model.

8 Q. So you took these few documents. Did you  
9 inspect documents when you were in Omaha?

10 A. No.

11 Q. So you got -- did you get -- the documents  
12 that you came back from Omaha, were they provided to  
13 you during your visit?

14 A. I spent some time with Harlan West with the  
15 particular cost model asking some questions about it.  
16 I don't even remember what. No physical documents.

17 Q. And you didn't take any documents that Harlan  
18 West provided to the staff while you were in Omaha?

19 A. No.

20 Q. After you came back from Omaha, other than  
21 preparing your testimony, did you ever run the cost  
22 model of the staff again?

23 A. Oh, I ran that model several times just to  
24 see how -- I mean I wouldn't know how many times I ran  
25 it, the original zero based model, to figure out how

1 the thing worked. But in answer to your question  
2 after the second and third or the second one.  
3 believe that I was provided, I don't believe that I did  
4 anything with that.

5 Q. So since the remand in this case, have you  
6 re-run the cost model with any inputs?

7 A. No.

8 Q. Now, you were also the president of TeleTech  
9 is that correct?

10 A. That's correct.

11 Q. And your company, as it's been mentioned  
12 earlier, is a member of TAG; isn't that correct?

13 A. That's correct.

14 Q. And from whom does TeleTech purchase its  
15 switched access?

16 A. It purchases from U S West.

17 Q. Does it purchase it from any other interstate  
18 access provider?

19 A. No.

20 Q. So 100 percent of the interstate switched  
21 switched access is purchased from U S West, is that  
22 correct?

23 A. Oh, as far as switched access, I guess  
24 interstate switched access we would buy from U S West.

25 Q. But intrastate access in the state of North

1 Dakota is purchased by TeleTech exclusive from U S  
2 West?

3 A. Well, SDN, obviously, we have a pipe to SDN

4 Q. But substantially all of that?

5 A. Substantial.

6 Q. That would be a fair statement?

7 A. Yes.

8 Q. So substantially all of your interstate  
9 switched access in South Dakota is purchased from U S  
10 West; is that correct?

11 A. Substantial, yes.

12 Q. Now, you've heard about these FIO reports  
13 from the testimony this morning?

14 A. Yes.

15 Q. And those reports, just so we get the records  
16 clear, are not a form report. There isn't a form that  
17 you get from U S West to report the percent interstate  
18 usage; is that correct?

19 A. I'm not familiar with the FIO as far as the  
20 actual forms. One of my staff people put them  
21 together, so I don't think I've ever seen the FIO  
22 report.

23 Q. But that is a report that is given to U S  
24 West, as you understand it, to tell them what  
25 percentage of the switched access is interstate use

1 what percentage is intrastate?

2 A. That's correct.

3 Q. And, as far as you know, are the reports made  
4 by your company to U S West, are they true and  
5 accurate?

6 A. I don't know that, but I do recall a comment  
7 and I haven't yet understood this. I believe he was  
8 instructed by U S West -- I remember him making a  
9 comment one time about making the interstate minutes  
10 the greater part of it. And I don't know what that  
11 means. Quite frankly, I haven't been able to quantify  
12 that at this particular point, but I do remember the  
13 statement. As far as PIU, and as I understand it, I  
14 took and calculated a ratio of the U S West group, as it  
15 can use that, between the interstate and the intrastate  
16 revenue. And I would guestimate that to be in South  
17 Dakota somewhere in the 20 percent range. It may be  
18 lower, it might be higher, but it should be in that  
19 range. All I know is that the carrier report that I  
20 identified, or that I had in my file, represented six  
21 million dollars worth of increases in access. So that  
22 it may be insignificant, six million dollars in South  
23 Dakota, in my mind, is significant.

24 Q. Mr. Noonan, please just listen to my  
25 question. They're very simple. What is the percentage



1 interstate access minutes that your company purchases  
2 from U S West?

3 MR. RITER: Just a moment, I'm going to  
4 object to that as calling for trade secret. I thought  
5 that was something we were going to bring up at a later  
6 time as far as a specific percentage.

7 MR. WELK: We do have that. I'm going to ask  
8 you whether you know.

9 A. I don't know.

10 Q. But you know that number is reported to U S  
11 West?

12 A. I do know we report a number.

13 Q. And you do know that number that is reported  
14 to U S West is the basis of how your company is billed  
15 for access; correct?

16 A. That's my understanding.

17 Q. Now, how do you internally calculate that  
18 percentage that you report to U S West?

19 A. I don't know. I'd have to get my network  
20 administrator to actually tell me how many we were  
21 about doing.

22 Q. So this number that you're reporting, you  
23 have no idea how it's calculated?

24 A. I personally do not have any idea of how it's  
25 calculated.

Q. And what percentage in a percentage term is the access cost to your business?

A. Which access cost now are we talking? Interstate?

Q. Interstate and intrastate. Do you know? A. I'm not talking about percentage of interstate. I'm in your total business operation.

A. Well, I can tell you as a percentage of revenue what it is. You don't want that either?

Q. No.

A. Let's see.

Q. Of your costs to do business.

A. Do you want me to approximate?

Q. Yeah, approximate.

A. It's about 72,000 per month exclusive.

Q. No, I want a percentage.

A. Yeah, 60 percent.

Q. So 60 percent of your business is determined by this access cost, and you don't know how to calculate -- you don't know how your business

calculates the percentage interstate versus intrastate?

A. I think you asked me for the components of the 60 percent. I don't know what that is.

Q. Are you aware that at approximately July 1993 the federal intrastate access rate was reduced?

A. I did see that particular document, yes.

Q. Do you know how much per minute effective approximately July 1st the federal intrastate access was decreased for your business?

A. I believe it netted to be in the two cent a minute range.

Q. Is that the resulting rate?

A. That's, I think, what it ended up being.

Q. What was the rate before the decrease?

A. I want to say 2.9.

Q. So was it a penny or a half a penny? I'm sorry, I didn't understand you, that is decreased?

A. About a penny.

Q. So your intrastate access rate approximately July 1st decreased one cent per minute; is that correct?

A. That's -- without verifying that, that's approximately what I believe it to be, but I do not do the costing in my operation so.

Q. You don't do the costing. Do you enter on the books and records in the ledger accounts the figures that are there?

A. Well, I separate them into two categories, one which is the variable cost component of switched access, and the fixed cost component. And so when you

or when I speak of the switched access

I'm talking about the variable excluding the

fixed cost

Q I'm going to ask a question now that's not necessarily related to access, just to the general operations of your business. Do you physically make the entries in your books and records as to the expenses and revenues?

A No.

Q You have someone else in your office?

A That's correct.

Q Are your financial statements audited?

A No.

MR. WELK: That's all the questions. We'll have other questions regarding the methodology of our rebuttal witness.

MR. ROSECK: Staff, cross-examination?

MR. CREMER: Thank you.

### CROSS-EXAMINATION

MR. CREMER:

Q Good afternoon, Mr. Noonan.

A Good afternoon.

Q Let's go first to page five of Exhibit 35.

A Okay.

Q And looking at lines 11 and 12, and if I

and I don't remember which piece of paper  
had it on any more, but under the U S West minutes?

A Yes.

Q And you've got it divided by 277 million and  
yet today when you were talking about it you had 279

million Did you change that number for some reason?

A Yes. Based on Harlan Best's revised numbers  
that he had in his last Sheet A.

Q And then so that then changes the calculation  
to .1230?

A That would be correct.

Q Okay. Look at your Exhibit F-2, please.

A Yes.

Q And on there under total, and it's the third  
line over. it's 166 million. What is that?

A Well, that's the carrier minutes that I  
had extracted. I had a staff person put this  
together from the actual confidential or proprietary  
minutes that we received, and he summarized that for me.

Q Do you know if Dakota and Express' minutes of  
are included in that number?

A I don't think I'd have any way of knowing

that.

Q Well, actually, there would be a method of  
checking that. And subject to check, if I were to tell

you those aren't included in there, doesn't that make your calculation wrong from the very start then?

A. Well, the more minutes you get, the lower the cost is, which is true, yes.

Q. Right. And so if you were to take those minutes out, how does that change it?

A. I'd have to calculate it. If you give me the number, I'd run the numbers.

Q. But the number that you've given us, you would agree, is wrong subject to check that Dakota and Expresses minutes?

A. If that's what you're representing.

Q. Okay. Does your company provide services statewide?

A. Well, yes, we did.

Q. Is it your company that was in the paper that asked Mr. Thurman about that you two have what, now combined?

A. Yes, we merged.

Q. You merged. What other services do you provide?

A. Well, we did provide basically inside wire and telephone systems and basically some consulting type of work for various customers, business customers, in addition to long distance. And we also have a call

center that we provide a nationwide call center for  
about 100 adjusters around the country. So but our  
largest segment of our business was long distance.

Q Has your company ever intervened in a docket  
on switched access charges other than this one?

A I don't recall that we have, not on switched  
access. I think we entered into the one where the  
exchanges were sold.

Q Okay. Your company, or did your company have  
nationwide averaged rates?

A We averaged every rate, yes.

Q Do you have route specific rates?

A No.

Q Volume discount plans?

A No.

Q How many residential customers do you serve?

A I thought you might ask me that. I don't  
know that exact figure. Personally, I don't know.

Q Zero to 20 or more than a hundred? I mean a  
ball park.

A And it would be a ball park. I would say  
it's in the 20 percent range of our total customers,  
which I believe were in the -- I believe to be about  
500 to 1,000.

Q Okay. What is the switched access rate

... recommending in this docket?

Q Well, obviously the access rate, I believe, I was calculating through -- and that depends on whether or not you do imputations. The one I did as an access rate was .03 --

Q Was it .0303730?

A That's correct, yeah.

Q And when you called it an alternate rate, that is my understanding -- is it correct that that ~~access rate~~ is not in compliance with the current ~~access rate~~ rules?

A Well, I think if you wanted to take my ~~access rate~~ and work with it, you get a rate lower than ~~access rate~~ depending on what you want to do with the credit ~~access rate~~ depending upon what you want to do about ~~access rate~~. But that's obviously what the Commission ~~access rate~~ deal with.

Q But in answer to my question, is it in ~~access rate~~ with the current switched access rules?

A I think I answered that part way.

Q Yeah.

A And so --

Q Yeah.

A I stand on what I said. I would have to ~~access rate~~ send back. Do you want to go through that



Q What's your recommendation for return on  
 or excuse me, for return on common stock equity  
 overall rate of return for U S West?

A Well, I did a calculation just on an  
 approximation. I thought there was about 44 to 50  
 dollars in the equity section of the South  
 ledger, even though that's not disclosed. But  
 the cost model and if it approximates the  
 revenue, which I think has a 13 million dollar  
 profit in it, so if you wanted an actual  
 estimated, obviously, there's about a 25 percent  
 return on equity.

Q That's what you're recommending?

A No, I didn't recommend. I said I think  
 I think it is approximately. I mean it's  
 to understand the concept in the private  
 where you add up all your expenses and then you  
 your embedded investment and take it times 9.62  
 and say that's my cost.

Q Well, if I understood your exhibits correctly,  
 Exhibit B and D you incorporated U S West's overall  
 return at 10.34. So I guess my question is you  
 prefer that over staff's 9.62?

A That was in the very first model. That is

not what the final model came out. These numbers represent the model that was run on the date that I indicated.

Q. If you look at your Exhibits B and D, you used 10.34. Now, that's not the one you want us to look at any more?

A. I'm telling you that's not a number that I put into the model. That was there and existed in the presentation I was looking at for the model. So either or someone changed it from the 10.34 to the final 9.62 that's in the current.

Q. 9.62 is staff's recommended in their cost study. 10.34 is U S West's. And my question is your exhibits show 10.34, so can I assume that's the rate of return you're recommending?

A. No, it's not. I'm not recommending a rate of return.

Q. You're not recommending anything?

A. That's correct, not as far as a rate based population. I mean you're using the 10.34 as the percentage you're taking times the rate base in order to put the profit in cost.

Q. I thought you used that 10.34 to come up with your .0303730. Now you're telling me you didn't use that?

A. No. I think if you look at my Exhibit D, what I simply did is I took the ten -- the 13 million dollar access, what I estimated to be the intrastate access of 13.5 million, and said that seems to be reasonable. And I took it and I did an imputation. In other words, I did take the 444 million minutes into what to come up with the .0303730 rate.

Q. Can you walk us through and tell me how to get to 13.5 million?

A. 13.5, you mean on Exhibit D?

Q. Yes.

A. Well, in that analysis I simply said that -- and if you look on Exhibit a one, I simply did a review of what the group did and I felt that the --

Q. Excuse me, can you tell me who the group is?

A. When I speak of the group, I speak of the U S West Communications group for which they issued an annual report to their shareholders.

Q. And that includes cable and their media and -- that?

A. No, it isn't. I would have to review. To my understanding, it's just the communications group. Cable, I don't know. I'd have to --

Q. It's not just South Dakota?

A. No, it's an entire 14 states.

Q Okay. Go ahead and keep walking down the list of your number here.

A All right. Then I simply took the actual costs that you're looking at. Those were the actual costs taken from the first model, and I simply reformatted those costs, the actual costs, into the network, or what I considered the network elements -- in other words, the fixed costs that were in the operation for the network. I was trying to arrive at a fixed cost, or as I thought, I was working on it, to come up with what is called the unbundled elements.

In other words, they're there -- it's like a road. I build a road. It's going to be there whether I drive over the road or not. And so I put those into categories. I reformatted it into categories such as you see on that exhibit, which is basically the elements that are listed on the far left-hand corner are the actual numbers taken right out of the cost model, and the depreciation was taken right off the cost base.

Q Whose cost model?

A The first cost model that I was presented -- and the cost model was dated -- the one that I took those numbers off, it was dated September 16th, 1996 -- so it was that run for which I pulled those numbers off.

1 Q. Is that Harlan's testimony, or you don't  
2 know? Or Culp's? Is it U S West's or staff's is what  
3 I'm trying to get at?

4 A. This is staff's. This would be Harlan  
5 Best's.

6 Q. Have you accepted U S West's adjustments to  
7 the cost of service in coming up with your  
8 recommendation of .030373?

9 A. No.

10 Q. In looking at your Exhibit D again, those are  
11 U S West's adjusted test year results, which I guess  
12 led me to believe that you had accepted those  
13 adjustments.

14 A. Well, my only comment is it what it is. I  
15 took it off those numbers reconciled to the cost model  
16 dated 9-16-96.

17 Q. Right. And I believe if you were to look at  
18 that closely, that would be Mr. Culp's and not  
19 staff's.

20 A. Oh, I don't know who generated it. All I  
21 know is I ended up with it.

22 Q. On page three of your testimony, lines five  
23 through seven --

24 A. Yes.

25 Q. -- why did you exclude gross receipt taxes --

1 the amount of \$257,000 from the revenue requirement.

2 A. I'm sorry, help me out on that.

3 Q. Well, which, again, you said five what?

4 A. Page three, lines five through seven?

5 Q. I'm sorry, right. And in looking at what you  
6 excluded gross receipts taxes in the amount of \$257,000  
7 from the revenue requirement. And my question is why  
8 did you do that?

9 A. Because it was on the model and it was  
10 excluded.

11 Q. Because what?

12 A. Because it was on the model and it was  
13 excluded. I would assume that it was also in the  
14 total, and that's why on the model it's taken out.

15 Q. In a number of your exhibits you took numbers  
16 from the 1995 annual report to stockholders. Is that  
17 right?

18 A. Yes.

19 Q. Did you personally verify those numbers?

20 A. Well, if we're going to -- they were audited by  
21 audited by Coopers & Lybrand. There was an unqualified  
22 opinion issued, which is the best I can do. It doesn't  
23 mean they're necessarily right, but that's how they  
24 were validated.

25 Q. Okay. Looking at page one of your testimony.

1 line 20, and you talk about the 1995 annual report.  
2 And your Exhibit E and E-1, if you'll flip to that.

3 A. Yes.

4 Q. Isn't that an -- actually, isn't that --  
5 actually didn't you get your numbers from a 1996 annual  
6 report?

7 A. Which is true, but it's comparative data so  
8 you got '95 there also. I mean the financial statement  
9 is compared. '96 is compared with '95, so you could  
10 use '95's report or '96, whichever you wanted to do.  
11 The numbers don't change.

12 Q. Well, then, on line 22, and you talk about  
13 Exhibit E-2?

14 A. Which page are you on?

15 Q. I'm sorry, page one, line 22, and you talk  
16 about Exhibit E-2.

17 A. Yes.

18 Q. And on that you have underlined telephone  
19 network access lines in service and you've underlined  
20 15,000; is that right -- million?

21 A. E-2?

22 Q. It's the one that says connecting each access  
23 the top.

24 A. Oh, yes, okay. That basically is taken from  
25 their annual report which identifies the total number

1 of network access lines for the period 1995 and the  
2 comparable 1995 and it compares it all the way back to  
3 '92.

4 Q. Okay. So in looking at the 14 million.

5 A. Yes.

6 Q. 795?

7 A. Right.

8 Q. And then on Exhibit A?

9 A. Yes.

10 Q. At the very top -- and my copy is sneaky, but  
11 it reads per access line and you've got 14,847,000.  
12 How did you get a difference in numbers there if you're  
13 using the same thing?

14 A. Well, I do see that. I can't read it very  
15 well on my copy either.

16 Q. But it's certainly not 795?

17 A. Yes, it is. That I did a compare on -- I  
18 mean I actually did the '96 numbers because I wanted --  
19 those numbers actually compare up with the left-hand  
20 column. So I wanted to take two years and look at both  
21 '95 and '96 so I could get a trend. And as you see in  
22 the operating revenue segment, the -- for example, the  
23 local service, I wanted to see how the income items  
24 were trending. So the local service went from 45.8  
25 percent of their total mix to 47.3. So that column



1 doesn't enter into any calculations but I did drop it  
2 in here for purposes of comparative. I particularly  
3 was looking at what was U S West earning as a  
4 percentage from intrastate access. And I found that  
5 1995 was actually percentagewise less than 1996.

6 Q. So where did the -- on Exhibit A where did  
7 the 14,847,000 come from?

8 A. Well, both of those come from the annual  
9 report.

10 Q. But where?

11 A. Well, I just go back to the ones you just  
12 quoted, that Exhibit E, has the 15,424,000, which is in  
13 the third column.

14 Q. Right, I see that.

15 A. Then you've got 14,795,000.

16 Q. Right.

17 A. Compared with '95.

18 Q. Neither of which are 14,847,000.

19 A. I think that actually is a --

20 Q. You would agree with me, though, that  
21 something is wrong?

22 A. I'm not sure. I did this on a spreadsheet.  
23 And even though I might have it at the top doesn't  
24 necessarily mean my calculations are incorrect.

25 Q. All right. Let's move on. On page two, line

14, and you talk about Exhibit E-7. And my question there is very simple. Where does that exhibit come from?

A. E-7, I believe, was -- I think I may have gotten this from some information at tax time when they were talking about -- or we were involved in whether or not centrally-assessed property should be repealed. And the state -- this is a listing from the state of South Dakota, or I assumed it was generated by the state of South Dakota. But it was the first indication that the two percent made some sense to me because centrally-assessed property identified in what they're paying taxes on was about 325 million dollars, and that was about 2.31 percent, which they say -- I think it shows state percentage. And so while that's the assessed evaluation that seems to be comparable to the 246 million that U S West says that they have invested in South Dakota pursuant to the cost model.

Q. But you don't know where you got this from? It doesn't have a Department of Revenue on it?

A. No, I guess I can't tell you exactly where it did come from. I know it to be approximately correct because this is a separate issue at the county level. We were concerned about it, and I called the centrally-assessed property at one time and they told

1 me on the books at that time there was 331 million.  
2 That was not the same year. So I felt the number was  
3 okay.

4 Q. Okay. On page two, line 34, in there it  
5 appears that access lines that were sold are removed  
6 from working loops in the numerator, but the  
7 denominator remained the same. And how do you do  
8 that? Why do you do that?

9 A. Well, that, here again, was just to calculate  
10 a rate. I was searching for what seemed to be  
11 reasonable as far as a gross revenue.

12 Q. But wouldn't it have been reasonable if you  
13 removed it from the numerator, to have removed it from  
14 the denominator?

15 A. 9.4 billion dollars, is that what you're  
16 saying?

17 Q. I am saying it doesn't make sense to me why  
18 you pick and choose the numbers you pick and choose, I  
19 guess. And I'm just curious why if you remove from the  
20 numerator, you don't remove from the denominator, and  
21 does it make the calculation wrong by not having done  
22 that?

23 A. It's a ratio times the gross revenue, so I  
24 did it both ways. So I didn't try to mislead you in  
25 any way.

**START**

**OF**

**RETAKE**

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21 does it make the calculation wrong by not having done  
22 that?

23 A. It's a ratio times the gross revenue, so I  
24 did it both ways. So I didn't try to mislead you in  
25 any way.

1 Q. I'm not saying you tried to mislead me, but  
2 I'm asking you about why you didn't remove from the  
3 denominator.

4 A. Because here's the reason. On the annual  
5 report -- first of all, in the cost model -- and I  
6 don't know what the working loops really are because I  
7 see three different numbers that I was able to identify  
8 for working loops. First of all, the cost model showed  
9 309,000 cost models -- or working loops. After the  
10 sale, it was 267,000 something. And if you go to the  
11 report that the PUC received, it's like 302,000. So  
12 the best I could do was to come up with a range,  
13 because it just doesn't seem to be extremely accurate  
14 from my point of view.

15 Q. If you look at Exhibit G, I believe the  
16 267,000 you were talking about, those are access lines  
17 and not working loop.

18 A. Can you describe for me the difference?

19 Q. I'm the attorney, not the --

20 A. I don't know that there is a difference. I  
21 think we sometimes identify access lines as being those  
22 that are switched access line, but it's still a working  
23 loop.

24 Q. I think if you read the Administrative Rules  
25 that would clear that up for you. Let's go to page

**END**

**OF**

**RETAKE**

1 Three of your testimony, lines 27 and 28.

2 A. Yes.

3 Q. And you say based on conversations with U S  
4 West and PUC staff, certain revenues do not need to be  
5 brought into the model calculation. And my question is  
6 what revenues do enter the cost model?

7 A. Well --

8 Q. And where?

9 A. Now, let's agree on which are we talking  
10 about when you say revenues? Mr. Culp, in his  
11 testimony, says no revenues come into the model, it's  
12 cost.

13 Q. Right. And I believe that was Mr. Best's  
14 testimony also.

15 A. Well, all right. So is your question do any  
16 of the costs come into the model?

17 Q. Revenue, as my understanding is, you know,  
18 the standard definition of revenue, I guess.

19 A. Well, I don't want to be combative here, but  
20 I remember I said both cost and revenue are equal, so  
21 when you say revenues in the model, the answer is, yes,  
22 and it's equal to the cost.

23 Q. So then in line 27 we could say certain costs  
24 do not need to be brought into the model calculations?

25 A. You get the same answer, I think.



1 Q. Did you do an analysis of the staff's cost  
2 study?

3 A. Did I do analysis of the cost?

4 Q. Right. I think Mr. Simmons and Mr. Thureau  
5 both told me that they thought you had done an analysis  
6 of that.

7 A. I mean I did an analysis of the model itself  
8 and the operations of the model and the inputs that  
9 were in there.

10 Q. Of staff's cost study?

11 A. Yes.

12 Q. Okay. And do you have any proof that staff's  
13 study or the resulting rate of 6.09 failed to reflect  
14 the rule defined costs?

15 A. I went through the presentation regarding  
16 where I thought that was incorrect. I don't have a  
17 problem with the -- as I stated, with the model in the  
18 way that the numbers crunch out. I just disagree with  
19 the conclusions we reach.

20 Q. So you think the inputs are unreliable?

21 A. Let me give you some illustrations I feel  
22 uncomfortable about the inputs.

23 Q. Well, I guess you and -- okay. Well,  
24 unreasonable would be different than uncomfortable, and  
25 you and your attorney can cover that later. My

1 question is do you think the inputs are unreliable?

2 A. In some cases, yes.

3 Q. Okay. But you think the model is okay?

4 A. The model itself in the presentations, in the  
5 formulae that are contained or embedded in the cells, I  
6 don't know. I don't have a problem with that for the  
7 exception of obviously the fact that I indicated in my  
8 testimony that certain expenses for administrative  
9 overhead, et cetera, are put into our column, which I  
10 take exception to.

11 MS. CREMER: Okay. That's all the questions  
12 I would have. Thank you.

13 MR. HOSECK: Sprint?

14 MR. LOW: No questions.

15 MR. HOSECK: MCI?

16 MR. GERDES: No questions.

17 MR. HOSECK: AT&T?

18 MR. LOVALD: No questions.

19 MR. HOSECK: Dakota?

20 MR. MARMET: Thank you for asking. No  
21 questions.

22 MR. HOSECK: And any redirect?

23 MR. RITER: Just a couple.

24 (EXHIBIT NO. 157 WAS MARKED FOR  
25 IDENTIFICATION.)

REDIRECT EXAMINATION

BY MR. RITER:

Q. Mr. Noonan, the reporter has marked as Exhibit 157 the three pieces of paper, for lack of a better description of them, the paper you used to describe your testimony to the Commission earlier today. And can you identify that exhibit that she's just marked?

A. Yes.

Q. And is that, in fact, the exhibit to which you made reference in your testimony?

A. Yes.

MR. RITER: All right. We would offer Exhibit 157.

MR. HOSECK: Point of clarification. Are these the sheets on the flip chart that you're going to introduce, or is this a condensation of them?

MR. RITER: These are the three sheets on the flip chart.

MR. HOSECK: Objections?

MR. WELK: U S West objects on the same grounds that it previously did, that this is a methodology that's not consistent with the Commission rules. The Commission has ruled that that is the correct methodology that we've got. The Commission is bound by

1 law to follow that, and this is not relevant, and it's  
2 contrary to the rules. And, therefore, we would object  
3 to its admission.

4 MR. HOSECK: Any other objections?  
5 Response?

6 MR. RITER: Yes. In response to it, we think  
7 that the ultimate decision for the Commission is what's  
8 a fair and reasonable rate. And this is an opportunity  
9 for the Commission to consider whether or not the cost  
10 model standing alone creates a fair and reasonable  
11 rate, or whether there are other elements that need to  
12 be considered to accomplish that.

13 MR. HOSECK: Objection overruled. It will be  
14 admitted.

15 MR. RITER: Thank you.

16 Q. Mr. Noonan, a couple questions to follow up  
17 some of the cross-examination. In response to  
18 Ms. Cremer's questions you indicated that some of the  
19 inputs in the model are unreliable or cause you  
20 concern; is that correct?

21 A. Well, I could point out some things that  
22 don't make any sense.

23 Q. And when you say they don't make any sense,  
24 generally why don't they make any sense? Because they

25 A. Because the numbers don't tie. Let me give

1 you a couple quick illustrations, if I might.  
2 Mr. Culp, in his testimony, said that the revenue was  
3 about 184 million. He also, in his testimony,  
4 indicated that they sold 24 million dollars worth. I  
5 mean, the revenue on the 55 exchanges was 24 million.  
6 Well, you subtract 184 from 24, you got 160. But you  
7 look at the revenue requirements in the last model that  
8 was called through, it was 168 million. Someplace  
9 along the line I see eight million picked up in cost,  
10 and I don't understand that. Okay?

11 I want to point out a couple other  
12 inconsistencies. In that particular model when they  
13 separate out interstate and others, that's 125  
14 million. But if you take Mr. Best's testimony, in his  
15 exhibit I could identify more than 125 million that was  
16 separated out. And I don't remember the exact number.  
17 I could probably find it here. Yes, it says interstate  
18 and others that was separated out. The model shows, I  
19 believe it was, 125 thousand -- million --

20 MS. CREMER: Can I ask where you're referring  
21 to?

22 A. All right. Let me go to Mr. Best's testimony  
23 and his exhibit. Go to his sheet B and look in column  
24 D, it shows 125,959,002. Now, depending on whose  
25 numbers you take, I can identify 82.3 million of local

1 service revenue that came in the door. I estimate the  
2 interstate to be 41.8, but I have 52 million that Mr.  
3 Culp's testimony regarding the interstate. Well, let's  
4 just take Mr. Culp's number and let's take the local  
5 that's reported to the PUC and say at least that should  
6 be reasonably correct. So if you take 82.3 million and  
7 you take 52 million, that translates to 135 million  
8 that I can identify that is related to the extraction.  
9 if I might call it that way, or the cutting out in the  
10 model. The numbers just don't make a lot of -- I mean,  
11 they're close, but a million here and a million there.  
12 pretty soon you're talking about real money.

13 Q. Mr. Noonan, when you worked your calculations  
14 and examined these books and records and spent the time  
15 that you spent, were you trying to determine what  
16 appeared to you to be a fair and reasonable access  
17 rate?

18 A. That's all I was trying to arrive at. I just  
19 could not understand how you could double rates.

20 Q. And as far as issues and questions about the  
21 cost model and how your result works with the cost  
22 model and whether it's consistent with the cost model.  
23 I would ask you do you believe that your calculations  
24 are the proper way to interpret the financial data and  
25 the required revenues needed to cover the embedded

cost?

A. I believe that the schedules that I have on the board, which are as close to the action that's taken place now, are fair and reasonable.

MR. RITER: Thank you. That's all I have.

MR. HOSECK: Commissioners?

COMMISSIONER NELSON: I have a question. I have several, as a matter of fact. Could you explain to me again what you were saying about why you thought U S West would be double-dipping on the carrier common line charge?

A. I don't think I'm saying they're double-dipping. I'm simply saying or trying to demonstrate that when you go through the model calculations and you come up with cost, which is equal to revenue, it is a reasonable in my mind to compare that figure to what revenue they actually received. The whole issue of imputation, which I understand is not a component of the regulations, but it does seem to me that imputation has to be addressed. And the common carrier line charge credit that should be given to interexchange companies should also be addressed. So I'm not saying there's any double-dipping. I'm just simply saying there isn't any substantiation for an increase because the money is already in the treasury.

1 COMMISSIONER NELSON: Are you saying that you  
2 already pay that charge so they shouldn't have to pay  
3 again?

4 A. I'm saying the revenue is sufficient right  
5 now to cover the cost of 10.1 million dollars that have  
6 been allocated to the interexchange companies.

7 COMMISSIONER NELSON: Okay.

8 A. That's all I'm saying.

9 COMMISSIONER NELSON: I think I understand  
10 that better now. Next question: Do you believe that a  
11 one-minute call that originates and terminates in U S  
12 West territory would be counted as two minutes?

13 A. You know, that's a good question. Because  
14 all I know is it does get, in my mind, billed as a  
15 double call. In other words, you will get an  
16 originating. When you look at U S West's bill and you  
17 sort through the myriad of components and you add them  
18 up -- and I think we'll have testimony to demonstrate  
19 how that works from Howard -- that is two times your  
20 money. You get charged for the 3.14 once on the  
21 originating side, depending on where it originates, and  
22 you're going to get charged when you terminate. Does  
23 that answer your question?

24 COMMISSIONER NELSON: No. Are you saying  
25 that you think it's charged as one minute or two?



1 A. I'm saying it equates to two, yes. It's  
2 really one minute, but it's charged for both  
3 originating and terminating, so your bill will actually  
4 be for six cents, for example. And I think if -- I'm  
5 hoping that Howard will show you how that works.

6 COMMISSIONER NELSON: Would you agree that  
7 even if you recognized a reduction in your interstate  
8 access charges, that would allow you to maybe eat some  
9 of the proposed 6.09 cent increase in excess charges;  
10 that that has really nothing to do with the  
11 appropriateness of the cost proposed in the 6.09 cent  
12 increase?

13 A. When you say eat, do you mean where --

14 COMMISSIONER NELSON: Absorb, whatever.

15 A. Well --

16 COMMISSIONER NELSON: Do you think one has  
17 anything to do with the other? I mean, because I heard  
18 people kind of implying because you got this reduction  
19 in your interstate rate, that you would be better able  
20 to pay the 6.09 and maybe that's why it's not  
21 inappropriate.

22 A. I don't mean -- I mean I can't comprehend  
23 that because if I take an interstate call that  
24 originates in Sioux Falls and it goes to Chicago, I'm  
25 only going to have a penny and a half to get the call

1 into my shop, and I may have 2.9, or let's say two to  
2 get it to Chicago; that's a three cent cost to me. But  
3 on the same token with this increase -- now, see if  
4 this makes sense to you, because it doesn't make sense  
5 to me. If I have to pay six cents for the same  
6 equivalent call originating in Mitchell and going to  
7 Watertown, I'm going to have to pay 12, double my  
8 money. It just doesn't make any sense. Now, I love to  
9 discuss that because I can't understand that either.  
10 And I apologize but maybe Howard can explain that.

11 COMMISSIONER NELSON: I guess what I'm saying  
12 is that it seems -- and I might not get this, but it  
13 seems to me that even if you did save some money, your  
14 interstate rate, it really has nothing to do with the  
15 rightness or appropriateness of the 6.09 cents and your  
16 interstate rate.

17 A. Absolutely not. I mean I can quantify it.  
18 It was quantified for me that with the increase it cost  
19 me 80,000 bucks. With the decrease it was 40. Now,  
20 any way I cut that many there's 40,000 gone out my  
21 door. And I've got to try to pass, or I needed to try  
22 to pass that cost on someplace or find other ways in  
23 which you get your cost down. And that would be an  
24 exercise all by itself as to what we need to do to stay  
25 competitive in this particular state.

1 I mean we need to take a look at and examine,  
2 and I said that in my testimony. I think we have to  
3 get to a fixed rate cost for the line. And, for  
4 example, if I go up and down the road with a truck and  
5 it's empty, it doesn't have much value in it. But if I  
6 fill it full of diamonds, you know, why should I charge  
7 you more for hauling the truck of diamonds than I would  
8 the empty truck? A wire is a wire is a wire, and it's  
9 the value we put over that wire that is going to create  
10 the competition.

11 COMMISSIONER NELSON: Okay. Thank you.

12 CHAIRMAN BURG: I want to go back to the  
13 minutes because I'm not sure I'm still clear. I think  
14 most of us recognize that when we make a call within  
15 the state, you got 3.14 cents. You did have. Now it's  
16 six point whatever, 6.4 right now, right, that you have  
17 originating. And if you terminate in South Dakota, you  
18 got to get at the end. We understand that. Are you  
19 saying -- but now we need to figure how many minutes  
20 they're counting for that. Are you saying they're  
21 counting one minute for that complete call or two  
22 minutes?

23 A. I think you have to ask U S West. I know  
24 what's on my bill. I know that same minute gets  
25 extended once for the originating side and once for the

1 terminating side.

2 CHAIRMAN BURG: But did you infer it's only  
3 counted as one?

4 A. I don't think my calculations would indicate  
5 that it's only counted as one, otherwise I wouldn't get  
6 a 7.5 cent revenue calculation.

7 CHAIRMAN BURG: So you are indicating that  
8 from your knowledge it isn't anything except counted as  
9 two minutes?

10 A. No, I think it's only counted once because  
11 the revenue is high enough such that when you calculate  
12 the minutes into the revenue, you get 7.5 cents. So  
13 U S West gets both sides of it.

14 CHAIRMAN BURG: So you're testifying that  
15 when it was -- I'll go back to when it was 3.14, that  
16 they were collecting six cents and counting it as a  
17 minute? Is that what you're testifying?

18 A. I think that's the way it works, yes. In  
19 other words, they don't count the minutes twice.  
20 otherwise, I wouldn't get those calculations. If they  
21 were counting it twice, I'd end up with three cents.

22 CHAIRMAN BURG: You indicated that when you  
23 were in Omaha that Bill Curtis, when you questioned  
24 him, he explained the need for the increase. He agreed  
25 that the two percent that you were saying was a

1 percentage of South Dakota, of total U S West, was  
2 passed the reasonable test at 3.14 cents; is that  
3 correct?

4 A. No, I didn't say that. I simply said that  
5 when I asked Bill about the fact that all of this cost  
6 and this expensive database model and all of these  
7 pockets of cost, that when they were all done chewing  
8 up the numbers through the system or the ledger, who  
9 upstairs looked at this and says is it reasonable? And  
10 that's all I was saying.

11 CHAIRMAN BURG: I thought you said somebody  
12 said they did.

13 A. They referred to two percent as a percentage  
14 of the 9.4 billion dollars coming from South Dakota.  
15 That's all I'm saying.

16 CHAIRMAN BURG: You said -- but did you say  
17 that they said that met the reasonable test?

18 A. That was kind of the measurement of whether  
19 or not everything was reasonable when they were done  
20 with it, I mean.

21 CHAIRMAN BURG: And that was at the 3.14  
22 cents; correct?

23 A. Yes.

24 CHAIRMAN BURG: Did you ask them, then, why  
25 if that was -- if that met the reasonable test,

1 doubling of that, of course, would make it much  
2 higher. It would make it -- well, it should make it  
3 four percent?

4 A. Another six million dollars should make it  
5 four percent of theirs, which didn't calculate.

6 CHAIRMAN BURG: Did you ask him why?

7 A. I did not, but that would have been an  
8 excellent question because I don't think that would  
9 have been of concern.

10 CHAIRMAN BURG: What your whole premise here  
11 has been, you tried to put some reasonable test  
12 calculations to the way the model works; is that right?

13 A. That's what I tried to do, yes.

14 CHAIRMAN BURG: I was trying to get where  
15 your base line was. And there's been a lot of talk  
16 about the PIU report. Do you know -- and I can ask  
17 this of U S West if not. Do you know what U S West  
18 does with that when they get it? And maybe that was  
19 answered.

20 A. That would be a good question. I've always  
21 been -- I do not understand that and maybe somebody  
22 could.

23 CHAIRMAN BURG: You don't know why you have  
24 to send that to them?

25 A. I'm sure they can tell you that.

1 CHAIRMAN BURG: Somebody indicated, and I  
2 guess I would go back -- I think it was after I wrote  
3 the question down, somebody indicated that it was used  
4 to separate the interstate and intrastate. Do you know  
5 if that's true?

6 A. That would be interesting if that's what it  
7 was used for.

8 CHAIRMAN BURG: Okay. I'll check it later.  
9 I think that's all I have.

10 COMMISSIONER SCHOENFELDER: Mr. Noonan, I'm  
11 just going to keep beating this dead horse.

12 A. Sure.

13 COMMISSIONER SCHOENFELDER: Go back to a  
14 statement you made about no credit for interexchange  
15 carriers for carrier common line charges and you cited  
16 rule 20:29:11. I still don't understand it. That's --  
17 let me tell you what I think and then you tell me where  
18 your company is coming from. That's the toll product  
19 that's being referred to, so that would be, to me, the  
20 way I look at things, is the retail toll product. You  
21 don't buy the retail toll product. Does an  
22 interexchange carrier buy that product? I  
23 misunderstood this. I'm just not understanding it.

24 A. Let me see if I can explain it in  
25 relationship to how I understand how the model works.

1 The model takes a percentage of the fixed cost and  
2 allocable cost and runs them against the interexchange  
3 cost. And in that cost, if you think about it, it's  
4 got that fixed embedded cost in it. And it seems to me  
5 -- well, that's the CCL, so it seems to me reasonable  
6 that that portion that relates to CCL ought to be taken  
7 out or credited back.

8 COMMISSIONER SCHOENFELDER: But don't you  
9 buy, in my terminology, at wholesale rates to resell,  
10 not at retail rates?

11 A. But if you increase this, there will be no  
12 wholesale rate because as I indicated, six cents times  
13 two is 12. That's at retail. That is not a wholesale  
14 rate any longer. That's a retail rate. It just is.  
15 If you have three double, that's six. And U S West is  
16 selling at 12.30 average. There's a spread there. But  
17 if you increase my rates from six and I have to here  
18 again originate and terminate a call at six, that's 12  
19 cents. That's -- I just proved that. You know, their  
20 average rate is 12.03. You take six and you take it  
21 times two, it's going to cost me 12. It's disaster.

22 COMMISSIONER SCHOENFELDER: That doesn't  
23 necessarily mean it's a retail product. I need to  
24 understand where you're coming from here.

25 A. I think you need to first define what retail



1 is from the standpoint of U S West. I don't know what  
2 is defined as retail. I mean when you've got --

3 COMMISSIONER SCHOENFELDER: That's my  
4 terminology. That's no one else's. That is something  
5 I use.

6 A. It's very good. I would agree with that.  
7 That's a very good question because you need to define  
8 -- the Commission needs to define what is a retail  
9 price. Because if you deny a spread, and I'll use that  
10 spread. If you do not establish retail wholesale  
11 pricing, I can guarantee over time you're going to be  
12 right back to where you were before. You will have no  
13 competition. What inattentive do I have? I can't go  
14 out and offer them anything. I can offer consulting  
15 services, maybe computer services. But if I don't have  
16 any spread or gross margin, I don't have any business  
17 that can get by without a margin.

18 COMMISSIONER SCHOENFELDER: Thank you. I  
19 need to ask you about one other thing. And this is at  
20 least the way you left it in my mind. I need to have  
21 this cleared up. In response to -- I can't remember  
22 whose question it was. You said when you were talking  
23 about minutes of interstate use.

24 A. Yes.

25 COMMISSIONER SCHOENFELDER: You said someone

1 in your company -- now, I'm trying to tell you what I  
2 remember, and I need this clarified exactly -- said  
3 that U S West or someone in U S West seemed to indicate  
4 that you should make the interstate minutes of use  
5 higher.

6 A. That is what I said, but I would need to get  
7 my network administrator and ask him about the filing  
8 of that PIU report.

9 COMMISSIONER SCHOENFELDER: The reason I'm  
10 asking you this is because of my experience with  
11 different areas of this industry. When someone talks  
12 about gaming the system as far as using more interstate  
13 minutes of use as opposed to -- they're usually talking  
14 about interexchange carriers. And I would like to know  
15 that if that's true, that if U S West said or someone  
16 in U S West said that they were gaming this system,  
17 then I want to know why it would be in U S West's best  
18 interests to do that. I want this very clear. This  
19 leaves some real questions in my mind, and I really  
20 need that cleared up.

21 A. And until I actually talked -- I mean I just  
22 don't remember. I mean I do just remember the  
23 conversation briefly about it being told that. I guess  
24 it's probably one of those I didn't follow up like I  
25 should have.

1 COMMISSIONER SCHOENFELDER: But you  
2 understand if you purchase out of the interstate  
3 tariff, in most cases in most states that's cheaper  
4 than purchasing out of state tariff, and that's how  
5 people game the system. And that's usually an  
6 interexchange carrier that does that, not an RBOC. I  
7 want to know. I mean you've left some real questions  
8 in my mind. I really need that cleared up before we go  
9 much further in this docket.

10 A. Tell me what the significance of that and  
11 maybe -- I mean I don't understand it.

12 COMMISSIONER SCHOENFELDER: Well, the  
13 significance is that usually interstate rates are  
14 cheaper than intrastate rates.

15 A. Well, yes and no. At 3.3 cents versus --

16 COMMISSIONER SCHOENFELDER: Yes. South  
17 Dakota has been unique up to this point.

18 A. When we mirrored it, it was a matter of  
19 indifference, wasn't it?

20 COMMISSIONER SCHOENFELDER: And we didn't  
21 have that problem in the state. I want to know if you  
22 are implying there's a problem and if you are saying U  
23 S West is gaming the system, I want to know how.

24 A. I don't know what I'm saying. I'm saying  
25 this comment is relatively old from my point of view

1 because I know the conversation was not recent. It  
2 would have been back at least a couple, two, three  
3 years ago because at the time I think I said what  
4 difference does it make if we mirror the rates? Why  
5 does it have to be any percentage?

6 COMMISSIONER SCHOENFELDER: Will you see if  
7 you could clear that up for me?

8 A. I'll try to talk to the network administrator  
9 and see if he can remember or recall the conversation.

10 COMMISSIONER SCHOENFELDER: I need that  
11 cleared up. Thank you. That's all I have, Mr. Hearing  
12 Officer.

13 MR. HOSECK: Any recross?

14 RECROSS-EXAMINATION

15 BY MR. WELK:

16 Q. I'd like to know the name of that person from  
17 the conversation that you just had with Commissioner  
18 Schoenfelder. What is the name of the network  
19 administrator?

20 A. That would be what have been Ron Leiferman.

21 Q. Would you spell that?

22 A. I think it's L-e-i-f-e-r-s-o-n.

23 Q. Is that --

24 A. I'm sorry, m-a-n.

25 Q. Is that person still employed by you?

A. Well, yes, he is.

Q. All right.

MR. HOSECK: Any further recross? Any further questions of this witness in any respect? If not, you're excused. Mr. Riter, call your next witness.

MR. RITER: We call Howard Susskind.

(EXHIBIT NO. 158 WAS MARKED FOR IDENTIFICATION.)

HOWARD SUSSKIND,

called as a witness, being first duly sworn, was examined and testified as follows:

MR. HOSECK: I have a procedural question here, and I haven't read the law lately. We have only one Commissioner present. I think we perhaps need a quorum, at least, to conduct the hearing. Sorry. Okay. Two commissioners are present. Please proceed.

MR. RITER: Thank you.

DIRECT EXAMINATION

BY MR. RITER:

Q. Would you state your name and business address, please.

A. My name is Howard Susskind, and my business address is 8622 Ordinary Way, Annandale, Virginia.

Q. Mr. Susskind, have you been retained by the

1 Telephone Communications Action Group to consider some  
2 of the issues involved in this docket and present your  
3 opinion relative to some of those issues?

4 A. Yes.

5 Q. And I want to ask you -- I realize that  
6 you've submitted some prefiled testimony, and let's get  
7 that identified first, please. Before you is Exhibit  
8 36. Can you identify that?

9 A. That is my initial prefiled testimony in this  
10 matter.

11 Q. And also in front of you is Exhibit 44. Is  
12 that your rebuttal prefiled testimony?

13 A. Yes, it is.

14 Q. And Exhibit 45, is that an errata page for  
15 the rebuttal testimony?

16 A. The actual page, the number page isn't on the  
17 table. Yes, an errata was filed. Oh, yes, that's it,  
18 I'm sorry.

19 Q. And as to the prefiled testimony first, I  
20 would speak of Exhibit 36, if I were to ask you the  
21 these questions today as you sit there under oath,  
22 would you give the same answers that are included in  
23 the Exhibit No. 36?

24 A. I would.

25 Q. And would you affirm to the Commission those

1 answers?

2 A. Yes, I would.

3 Q. As regards Exhibit 44, if I were to ask you  
4 those same questions included in that exhibit, would  
5 you give those same answers today?

6 A. I would.

7 Q. And do you affirm those answers as are  
8 included in Exhibit 44 with the errata on 45?

9 A. Yes.

10 Q. Mr. Susskind, before I offer those exhibits,  
11 I want to ask you a little bit about your training and  
12 your background. Would you please tell the Commission  
13 about your training educationally?

14 A. Educationally I have an undergraduate degree  
15 in physics from Princeton University, master's degree  
16 in engineering and applied math from Cornell and an MBA  
17 from Cornell. And just subsequent to finishing that  
18 last degree I taught briefly in the mathematics  
19 department at Cornell.

20 Q. Would you tell the Commission about your work  
21 experience.

22 A. I served as a regulatory analyst at Rochester  
23 Telephone Company, which now goes by the name Frontier  
24 Communications, working in the deregulated long  
25 distance subsidiary of the business. And one of my

1 chief responsibilities was to assess the effects of  
2 access charges on the long distance subsidiary  
3 particularly when due to the high volume of business  
4 that the deregulated sub had in Rochester to look at  
5 effects of the regulated subsidiaries' access charges  
6 on the deregulated subsidiaries' long distance  
7 products. After Rochester telephone --

8 Q. How long were you with Rochester?

9 A. About a year.

10 Q. All right.

11 A. After Rochester Telephone I went to work at  
12 Cable and Wireless, Inc., Vienna, Virginia, where my  
13 first position was as an access charge analyst and  
14 regulatory analyst focusing on access charge issues,  
15 industry structural issues. And then I later became  
16 the manager of access analysis and access purchasing,  
17 which meant that I was responsible for the purchase of  
18 switched access from local exchange carriers on a  
19 national basis, and that was for a long distance  
20 company with revenues of about a billion dollars. And  
21 I was one of the chief interfaces to deal with the Bell  
22 companies and other local exchange carriers in all  
23 issues where long distance companies and local exchange  
24 carriers traditionally do business with each other.

25 Q. Excuse me, did you advance with that company



1 then, Mr. Susskind?

2 A. After working in the access and network  
3 optimization area, I worked to manage the finances and  
4 profitability of a company called the Cable and  
5 Wireless Internet Exchange, which was a venture run out  
6 of the parent company in London. And the goal of that  
7 company was to build a global Internet backbone  
8 connecting company operations in over 40 countries. I  
9 did that for about a year and a half. It was my last  
10 position at Cable and Wireless. And during the course  
11 of that I had the opportunity -- because if any of you  
12 have heard about voice over the Internet and some of  
13 the furor about that, there are a number of entities  
14 interested in doing internal voice over the Internet.  
15 So it was an opportunity to become familiar with access  
16 charges and national charges in countries all over the  
17 world.

18 Q. After you completed your association with  
19 Cable and Wireless, what did you do?

20 A. I became a partner, founding partner, in the  
21 consulting firm of International Protocol, which is a  
22 firm that specializes in Telecom business planning,  
23 policy issues, and economics. One of the first major  
24 projects that we took on behalf of a client was to  
25 examine and analyze the formulation and effects of the

1 FCC's access charge restructure on that client and on  
2 the industry in general. And during the course of  
3 that, I had the opportunity to work very closely with  
4 the staff from the Bureau of Policy and Planning that  
5 put together that proposal for the FCC and had the  
6 opportunity to brief two FCC commissioners on the  
7 details and on the effects of that plan on the  
8 industry. Since then I've advised a number of my  
9 clients on the effects of switched access charges.

10 Q. Have you had occasion also to speak at  
11 professional assemblies relative to issues of this  
12 nature?

13 A. I have. Over my career in Telecom, I've  
14 probably spoken 40 times principally on access charges  
15 issues, although, as I said, some minor portion of the  
16 career was spent with Internet issues.

17 Q. And did you include as exhibits to your  
18 testimony, your direct testimony, your work experiences  
19 as well as a listing of the conferences, forums, and  
20 speaking engagements in which you've been involved?

21 A. Yes, I did.

22 Q. Mr. Susskind, as far as -- and I'm not sure  
23 asked you this. As far as prefiled Exhibit No. 36, are  
24 there any additions or corrections that need to be made  
25 to that?

1 A. No, there are not.

2 MR. RITER: We would offer Exhibit 36.

3 MR. HOSECK: Objections?

4 MR. WELK: U S West has no objections to the  
5 prefiled testimony.

6 MR. HOSECK: 36 only?

7 MR. WELK: 36 only, yes.

8 MR. HOSECK: Proceed with your objections.

9 MR. WELK: Thank you, Mr. Hearing Officer.

10 U S West would object to the testimony, prefiled  
11 testimony, on pages three, line four; page four, line  
12 36, and the basis is this: The foundation for the data  
13 presented in that on those pages are financial  
14 statements provided by certain TAG members and also  
15 impact statements prepared by U S West. In the  
16 Prehearing Order that caused this proceeding to be  
17 convened, in paragraph three of the Prehearing Order  
18 the Commission specifically directed U S West that any  
19 additional numerical evidence submitted by U S West  
20 shall at a minimum include foundational evidence from  
21 its employees or consultants who actually compiled or  
22 otherwise assembled the information contained in the  
23 cost study as opposed to those employees who act only  
24 in a supervisory capacity. All such evidence shall  
25 further be verified by U S West as to its accuracy and

1 validity for use in the cost study.

2       The information that is the foundation for  
3 the tables that exist there have not been subjected to  
4 the same foundational requirements that U S West has  
5 been submitted to in this docket; and, therefore, I  
6 would move that because of a lack of foundation and it  
7 will be consistent with what has been applied to U S  
8 West, that be stricken.

9       In addition, we would move to strike page  
10 five, line 30, to page six, line 33, on the same  
11 grounds, that there's no foundation. It's not been  
12 adequately verified in accordance with the prehearing  
13 order of the Commission. This witness has no personal  
14 knowledge.

15       And, finally, because it involves a toll  
16 pricing issue, which we've already determined is not  
17 subject to this proceeding, it's a separate proceeding,  
18 and this is an access proceeding. So for all those  
19 reasons, we ask respectfully that those portions of  
20 that testimony be stricken.

21       MR. HOSECK: Response?

22       MR. RITER: If I might respond, yes. If it  
23 please the Commission, each of the representatives of  
24 the TAG members affirmed under oath today the accuracy  
25 of the information that they provided to Mr. Susskind

1 and upon which he relied to formulate his opinions.  
2 Admittedly, in some of the testimony that Mr. Welk  
3 asked of some of those people, they said they had not  
4 actually put every single one of the documents  
5 together, or every single one of the numbers into the  
6 documents, but they were responsible for it. We're  
7 talking about small, closely-held companies in which  
8 the managers have significant interest in the business  
9 and closely monitor the business. And I think that if  
10 -- and there is really not a comparison between U S  
11 West, a publicly traded company, and these small  
12 closely-held companies. We believe that we have set an  
13 adequate foundation that those individuals have  
14 testified. They're all here today if further inquiry  
15 needs to be made of them.

16 Secondly, as far as the toll question,  
17 through this witness we intend to show that the toll  
18 issue is, in fact, an issue involved in access because  
19 it relates to the fairness and the reasonableness of  
20 the rates that are being charged by way of access  
21 rates. Because if our clients are being charged an  
22 exorbitant amount by way of access, how can they  
23 effectively compete with the toll business of U S  
24 West. So we think they are interconnected and to  
25 determine the fairness and reasonableness of the rates

Q. Now to have that availability. And Mr. Susskind  
 will explain that further.

MR. ROSECK: The objection is overruled, and  
 Exhibit 44 will be admitted.

Q. We would also direct your attention to  
 Exhibit No. 44, Mr. Susskind. And other than the  
 page shown on Exhibit 45, are there any  
 additions or corrections to that exhibit?

A. No.

MR. RITER: We would offer Exhibit 44.

MR. ROSECK: Are there any objections?

MR. WELK: No.

MR. ROSECK: There being none, Exhibit 44 and  
 will be admitted.

Q. Mr. Susskind, in preparation for your  
 testimony today, what exhibits, what documents did you  
 review?

A. I reviewed really two sets of documents that  
 were incorporated into the initial prefled testimony.  
 The first set of documents were supplied to me by the  
 TAG member companies. Those were their U S West South  
 before intrastate switched access impact statements --  
 that's a mouthful -- as they received directly from U S  
 West and provided on to me. The second type of  
 document that I received from the TAG member companies

1 was their financial statements, particularly including  
2 income statements which became a direct ingredient into  
3 calculating the effect of the access charge increase on  
4 those companies.

5 MR. RITER: I would state for the Commission  
6 and for counsel, those documents have been filed under  
7 seal with the Public Utilities Commission. And from  
8 talking to Karen Cremer earlier, I understand that that  
9 document is not up here at this time. It's down in the  
10 original record filed with the Public Utilities  
11 Commission. We do, however, think that it ought to be  
12 included as an exhibit to Mr. Susskind's testimony as  
13 it is supportive of that testimony. We are desirous,  
14 nonetheless, of having it remain under seal. So  
15 perhaps I can inquire of counsel for U S West if we  
16 could mark that later and just continue it as part of  
17 the record relative to this portion of the testimony?  
18 If you want me to go down and get it now, I can do  
19 that.

20 MR. WELK: So if you're introducing this in  
21 the record, then, I have a right to cross-examine as to  
22 all of the background on his statements?

23 MR. RITER: Well, I don't want to have that  
24 occur.

25 MR. WELK: You can't put it in and not let me

1 cross-examine on it. You can't have it both ways.

2 MR. RITER: All right. Then we won't put it  
3 in, that's fine. Because I'm not going to open this up  
4 in that regard. We don't need to put it in then.

5 Q. Let me ask you this question then,  
6 Mr. Susskind: And I guess I already pretty much  
7 testified to that but so it's in the record from a  
8 witness as opposed to an attorney, did you in fact  
9 include a sealed confidential envelope with that  
10 information by way of financial statements and also  
11 access charge information that you had received from  
12 the four TAG members?

13 A. I did.

14 Q. What else did you rely upon in formulating  
15 your attitudes toward the issues involved in this case?

16 A. Well, as I said, the goal of the direct  
17 testimony, prefiled testimony, was to ascertain the  
18 financial and competitive effects of U S West  
19 intrastate access charge increase. To formulate the  
20 financial effect, no other ingredients directly were  
21 required other than the impact statements from U S West  
22 and the financial statements of the individual  
23 carriers. To formulate the competitive effect, if you  
24 will, because the member companies of TAG purchase  
25 intrastate switched access as a necessary input into



IN CIRCUIT COURT

COUNTY OF HUGHES ) SS

SIXTH JUDICIAL CIRCUIT

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U S WEST COMMUNICATIONS, INC.,

CIV. NO. 97-50

Appellant,

20 100 200

TRANSCRIPT OF  
ORAL ARGUMENT

PUBLIC UTILITIES COMMISSION  
OF SOUTH DAKOTA,

RECEIVED

Appelles.

JUN 02 1997

UNITIES COMMISSION

BEFORE: THE HONORABLE STEVEN L. ZINTER,  
Circuit Court Judge of the Sixth  
Judicial Circuit, Pierre, South  
Dakota, on May 16, 1997.

◆ ◆ ◆ ◆ ◆

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EXHIBIT  
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\* \* \* \* \*

THE COURT: All right. Let's have counsel make their appearances starting with Mr. Harmon.

MR. HARMON: Tom Harmon, Tieszen Law Office for Sprint.

MR. HOSECK: Camron Hoseck with the Public Utilities Commission. And I have appearing with me today my legal intern, Trisha Zimmer, from Parker, South Dakota.

THE COURT: Okay.

MS. WILKA: Tami Wilka from Boyce, Murphy.

MR. WELK: Tom Welk from Boyce, Murphy representing US West Communications. We also have appearing today, Your Honor, Robin Bittner, B-I-T-T-N-E-R, a legal intern in our office who is here to watch the proceedings.

MR. RITER: Bob Riter for the Telecommunications Action Group along with David Pfeifle of our office.

MR. LOVALD: John Lovald from the Olinger Law Firm on behalf of AT&T.

MR. SAHR: Bob Sahr of May, Adam, Gerdes and Thompson representing MCI.

THE COURT: Okay. Counsel, any preliminary matters? If not, then Mr. Welk or Ms. Wilka, who's going to argue?

MR. WELK: Thank you, your Honor. Good morning, Counsel.

Your Honor, this proceeding presents an opportunity

for judicial review under 1-26-36 of the Commission's decision on US West's application for an increase in switched access rates. As the briefs reflect, switched access rates are the rates that US West charges long distance telephone carriers to use US West facilities.

I'm not going to go into many of the points in the brief. I will highlight, however, one of the points that I'd like to talk about that really didn't get a lot of explanation in the briefs, which was standard of review. And I would like to talk about that because I know it's important to the Court and it's important to the record.

The parties have cited a number of cases that talk about what the applicable standard of review is. However, how the parties apply those standards of review to the facts in the record below has not been very clear. US West believes that a de novo standard of review exists as to this record. This is so because the Court's review is that of analyzing, in our view, a mixed question of law and fact. There is no question that under South Dakota settled law that conclusions of law are fully reviewable.

We believe that a mixed question of law and fact exists because US West challenges the Commission's decision on how it applied the evidence to rules enacted by the Commission on how it computes switched access.

In reviewing back on preparation for the argument,

the South Dakota Supreme Court cases on looking how you define a mixed question of law and fact, I return back to the sentinel case of Permenn that really started the analysis of the various types of review that the circuit courts have. In the Permenn case, which has been cited ad nauseam by all courts, the Supreme Court, Circuit Courts and the parties, the South Dakota Supreme Court did talk about how you define what a mixed question of law and fact was. And what Permenn talked about and said was that a mixed question of law and fact existed when you -- the Court applied law to facts to determine about underlying values as to legal principles. And that was the analysis that the Court gave in Permenn.

In this case, we are looking at how the Commission used evidence to apply to the rules that existed. And in Permenn, if you went back and looked at the case and looked at what the Supreme Court said the mixed question was, in Permenn the Supreme Court said the mixed question in that case was whether this particular person had appropriately sought unemployment compensation benefits by looking for other employment. And the Court said on -- when you look at whether they applied it in the proper manner and looked for employment in light of the regulations, that became a mixed question and therefore, de novo review was applicable.

We've also cited in our briefs the recent cases -- Beerman v. Beerman and Fiegen which held -- they were not administrative law cases, but which held in instances where trial courts seek to apply a legal standard to the evidence, a mixed question of law exists.

So we suggest respectfully, your Honor, that the questions before the Court today are mixed. Other parties will argue that the clearly erroneous standard applies and under that test, as the Court is well aware of, and the Court has written many times on this, the issue is whether there's substantial evidence to support the Commission's finding. We believe that no matter what standard you apply, the Commission's decision should be reversed.

THE COURT: Well, even if it is a mixed question, when you look at the statute 12.4(4), it says after any hearing the Commission shall determine a fair and reasonable rate. It seems to me that ultimately that's a fact question.

MR. WELK: It may be in most instances, but on this record, I will argue later that that is not necessarily so because of the Commission's rules.

And why I say that, your Honor, is that this -- if you look carefully at what happened in this case, and the findings were made by the Commission seek to blanket its decision on a credibility determination, this is not a

case where the Commission heard witness A and then witness B and made a determination. It's not a case also where US West came in like, for example, in a rate proceeding and said, here are all our costs, here are all our numbers and look at it and this is a fair and reasonable rate. That is not this case.

THE COURT: Except that they do have the right to disbelieve Culp if they want to.

MR. WELK: They have the right, but you got to ask yourself why do you disbelieve Culp. That's the issue. It's not because Culp wasn't credible. That's not -- I believe that's where we have to cut to the number here. They've said we don't believe Culp, but what did Culp do but present numbers that were the company's numbers and the computer cost model.

That's why this case is unique versus another rate case. This had a Commission model. There is a prescribed methodology. I mean, the people came and you put numbers in the computer model, and the number is produced.

THE COURT: Except the -- I don't see anything in the Commission's findings complaining or -- the Commission uses the words "evidentiary shadow." I kind of like that. But there's no shadow over the administrative rules over the model. It's the inputs that we're talking about here.

MR. WELK: Let's get right to the numbers and the

shadow is in the inputs, but what is the disputed issue in the inputs? In this record, the dispute is the rate between 5.5 and 6.14. That's the dispute.

THE COURT: Well, are you willing to take 5.5?

MR. WELK: Yes. And we're willing to take 5.5. And why, because --

THE COURT: It's 5.55, isn't it?

MR. WELK: 5.55. Those numbers do make a difference when you multiply them by 5.55.

Why are we willing to do that? The reason, your Honor, is next year it will be a year since we filed this application. There is no reason that it needs to be remanded back if you just take 5.55 because that's all the record will support anyway if you gave all of AT&T's criticisms, which we have said we don't believe them, if you gave them to them that's the best the record will sustain. And so that is why we're willing to take the rate and move on.

THE COURT: I thought you were willing to accept 6.125.

MR. WELK: Well 6.14 is the rate we were willing at the hearing to accept, the staff's adjustments.

THE COURT: But there's no record of you agreed to take 5.55.

MR. WELK: No, there is not a record, but I have



talked to my client and I have asked because I anticipated this question. And what -- why we want -- we'll take 5.55 and move on because of the delay that has occurred, your Honor, in this proceeding.

You have to understand that we're the only ones that want this rate. All the people in the courtroom, delay is on their side. They don't want this rate. And we have waited over a year and we figure that any additional remand proceedings, unless you prescribe that they must be back here in a certain period of time with a very limited review, we will just take the rate and move on. That's what my client has authorized me to state.

THE COURT: Why couldn't you -- this is something I didn't quite understand. You attempted to unilaterally implement and then they dismissed the case on you.

MR. WELK: Yes.

THE COURT: But why couldn't you -- you couldn't unilaterally implement anyway?

MR. WELK: If we wanted to -- I suppose if we wanted to play hard nose under the applicable law, but they denied the rate application. If you look at the statute, I think that they were required to enter an order and that's what happened. The 180 days was approaching. They then -- they then entered an order denying it. We would have been going against the Commission's order and we

sought through this process of judicial review  
rectification of that order.

THE COURT: Rather than stick your neck out and just  
try to implement it and see if that subsection 5 allows  
you to do that?

MR. WELK: We would rather do -- have this Court make  
that decision. It would have been -- then we would have  
been talking about refunds and the rates. So we're at  
risk for revenue now that's not been ordered. That's why  
we want a quick decision in this case.

THE COURT: But, you know, how can I -- at the very  
best, your case is a remand, it seems to me, because am I  
supposed to order 5.55 over 6.15? I don't think so.

MR. WELK: I knew you would ask that question. And  
my answer is if we are willing to concede the 5.55 without  
a remand, I don't think there's any error in that respect.  
I can't disagree with you, your Honor, if you said I'm  
going to remand this back and the rate ought to be between  
these two numbers. I really can't in good conscience say  
that that would be an error for the Court to do that.

But what I am concerned about is if you remand this  
back and we have been through these proceedings, what will  
be the limit of your remand? I mean, it ought to be  
reversed and establish a rate between those two numbers  
and not reopen the proceedings. Because if we get into

1 that we're going to be back here in several months again  
2 arguing about what ought to be in the remand proceeding.

3 So if you remand, it needs to be narrow, it needs to  
4 be defined, you know. I would like the remand order to  
5 say that within X number of days you need to enter a  
6 decision because there is no incentive for anybody but us  
7 to have an order entered so the rate is applicable.

8 THE COURT: But the Commission was obviously  
9 concerned with -- another phrase I like was "scrubbing the  
10 numbers." If they want to scrub the numbers they should  
11 have the right to do that, shouldn't they?

12 MR. WELK: They should have done that before the  
13 hearing.

14 THE COURT: I understand.

15 MR. WELK: That's the point.

16 THE COURT: As I read the record, what happened was  
17 they reopened the record to do that. You indicated you  
18 weren't going to unilaterally or voluntarily produce  
19 additional evidence and AT&T says, all right, you're toast  
20 and the Commission agreed. But they've got -- you know,  
21 they have broad investigatory powers. They can make you  
22 produce anything that you've got --

23 MR. WELK: Sure.

24 THE COURT: -- to scrub these numbers.

25 MR. WELK: They can do that, but they ought to give

us a rate while they're doing that.

We had a hearing -- we had this thing from June of '95 until October. If they want to go ahead and investigate numbers, order that. Your Honor, they can do that under their general powers. They can come back, they can come enter an order to show cause hearing.

But the problem is, your Honor, what they wanted to do was merely a facade to deny the rate application. I mean, first of all, the order that reopened the record, what did it say? It was going to be at the hearing. There was nothing in the order. There was a resolution that was passed by two commissioners. But if you read the order on reopening, there was nothing.

THE COURT: Well, oh, -- well, doesn't it -- I thought it incorporated the transcript or the --

MR. WELK: Well, I would like --

THE COURT: -- and it didn't. I have read so much. Maybe somebody said that in a brief.

MR. WELK: It's ordered that the record be reopened for purposes of taking additional evidence and the Commission's executive director work with the parties and establish a procedural schedule for further hearing in this docket.

It did talk about in the second paragraph at the meeting a motion was made that the record be opened and

Burg seconded and Stofferahn dissented. That's what's in the order, which we're -- I think we're entitled to rely on the order.

And our point, your Honor, and because I know that that question is going to come up is why didn't we go back and do that. The point -- issue, your Honor, at that point in time was pointless. I mean, these rules either mean something or they don't. And that's the real purpose of this hearing. Do these rules that the Commission enacted for every other company apply to US West and apply fairly. That's the real issue here.

THE COURT: But shouldn't you have gone back and done the scrubbing?

MR. WELK: Why? Why should we have to do that?

THE COURT: Well, the Commission didn't like -- they had some -- obviously they were, according to their findings, they had some questions about the verifiability of some of the numbers that were being used.

MR. WELK: Let's talk about the issue of verifiability. What are they saying they had a concern about. What does the Commission want done, to have numbers under oath, to have every person who entered a transaction come before them?

Your Honor, I know you hear a lot of these proceedings, but what you don't see, your Honor, is the

day by day interaction between these companies and the staff and the PUC. The way these proceedings work is that reports are filed with the PUC, the FCC. Books of account are used every day by the companies. And they are given to the staff, they're filed with the FCC, and these become the essential ingredients as to what people can rely on.

And remember under 1-26, the standard for evidence is preponderance and what a reasonably prudent person would rely on. At some point in time, your Honor, when the company comes forward and says, these are our books and records, these are what we filed with the FCC, we have met the burden of going forward and the burden of persuasion. And if somebody wants to believe that those are not accurate, the burden ought to shift to them. And AT&T and no one else is doing anything. They're just throwing harpoons up.

And I will tell you -- and you have never -- you have not heard this disputed by the Commission -- never in the history of the proceedings of the Commission has there been a requirement to have an independent audit. And in fact, the underlying data that you get to that's the subject of this, most of it was contained in the ARMIS reports -- A-R-M-I-S, an acronym. If FCC reports, which are where the formation comes -- the basis comes from an independent audit. That -- I don't know what more

1 companies can do if the Commission wants to go down and  
2 investigate and look at that, they can do that any time  
3 they want to. They clearly have the right to do it. But  
4 this was an evidentiary hearing. The time was then and  
5 there to make the decision.

6 And we think, your Honor, and I do want to comment  
7 because I believe that the staff in general -- we don't  
8 always agree with the staff of the PUC. We have a lot of  
9 disagreements, but in this case, the Commission chastised  
10 its own staff for doing what they have been doing through  
11 all some of the 20 years of employment that these people  
12 have worked. This is what they have done before, they did  
13 it for the Commission and there was no objection. So to  
14 automatically -- for the Commission to say out of the  
15 blue, gee, we want to look at the numbers that people have  
16 been relying on for years and years is patently unfair.

17 And the burden ought to shift to somebody else other  
18 than US West to show that there's a problem and there  
19 wasn't a problem. It's just what do we think the numbers  
20 ought to be. And that isn't what the administrative  
21 hearing ought to be. Somebody, if they had a problem,  
22 should have been at the hearing talking about those  
23 numbers.

24 AT&T, the only proponent of the criticism, didn't  
25 even run the model. I mean, you've got a computer model.

you put inputs in and they're sitting harpooning at the hearing and they didn't even run the model. They had the time to go down and do it and they didn't even quantify their own criticisms. We had to do that in rebuttal. That's where the difference between 6.14 and 5.5 comes, and when it comes time for surrebuttal and that AT&T stand up to say do you disagree with the numbers that -- as to the criticisms, no evidence. They did not dispute that taking all their criticisms produced a rate of 5.5. So the only dispute at the hearing was between 6.14 and giving AT&T every deference, 5.5. And so that's the real dispute here.

But, your Honor, I want to talk about the rules. And because the rules to me show what happened in this case. Remember that the record establishes that these rules were done in rule making hearing with most of the companies that are in this proceeding there, not all of them because TAO has a number of smaller companies that didn't participate. But the big ones were all there. And the Commission was faced with determining a methodology to determine switched access rates. They didn't want to go through these interminable hearings so they came up with a uniform methodology. That's what the rule promulgation process is for. We all went in; we made our arguments; we all didn't like what happened, but the methodology was



produced in the rules. The rules are binding on the Commission.

And I have looked forever -- at least in the last couple of cases I've had up here -- for a South Dakota Supreme Court case to say that the Commission is bound by their own rulings. I haven't found it. I found a number of other cases in other jurisdictions, but the PUC concedes in its brief that it's bound by the rules.

But the PUC in its brief also states that -- and this is what I found in incredible -- being bound by rules is one thing, giving them any practical effect is quite another. I don't know what that really means.

THE COURT: But you're talking about here application of the rules. Nobody disputes -- there are no findings or conclusions saying they don't like the model anymore. Now, I read in the transcript before some of the Commissioners thought maybe we should look at that again.

MR. WELK: That's fine.

THE COURT: But this is an application issue, not -- I don't see the Commission saying we don't want to follow that rule anymore.

MR. WELK: Well, why didn't they follow the rules?

THE COURT: But the rules don't dictate the --

MR. WELK: Rate, no.

THE COURT: -- the rate or disputes about the inputs.

MR. WELK: That's correct. But in -- on this record -- and that's all you have before you -- what was the dispute? The dispute was between 6.4 and 5.55. That was the disputed issue. And I don't think any agency can just, on its own speculation, start creating evidentiary issues that don't exist. The record was there. They should have made the decision between those two rates.

Your Honor, I believe that the Findings of Fact and Conclusions of Law need to be reversed. And there's a number of reasons why some of these need to be reversed. Some are technical, some are substantive.

I submit that Findings of Fact VI through XVI need to be reversed for a technical reason. And that is those Findings talk about what particular witnesses testified to. And as this Court is well aware of, in the preparation of findings of fact, findings of fact are supposed to reflect ultimate facts not evidentiary facts.

THE COURT: SPDS says the opposite. There better be underlying facts to support ultimate fact.

MR. WELK: But the ultimate fact does not have to go through witness by witness as to what they said. We may have a difference as to what an ultimate fact is, but to me it's not necessarily saying witness A said this; witness B said that. Yes, there needs to be, you know, a basis in fact, but it doesn't need to go exhibit by

exhibit and witness by witness.

THE COURT: But it can if it wants to.

MR. WEIK: I suppose, but I don't think that's what

ultimate findings of fact are all about. Then you would

have to make a finding about every witness and every

exhibit. That's the logical extension of how these things

are drafted and I don't think that's what the Supreme

Court has said in its legion of cases about talking about

how to draft findings of fact and conclusions of law.

But we've also -- there's some -- we believe that

findings of fact XXIII through XXX, which is the substance

about the rate, and conclusions of law V to IX need to be

reversed because those, we believe, are errors of law and

believe that the application of the findings of fact

justify the reversal of the decision.

I do want to talk about the public interest findings

of fact because I don't think that clearly -- I mean --

our position is, and the Commission has disputed this, is

that in setting these rates, the element of public

interest is not one of those elements that the Commission

is authorized by law to consider.

Now, the Commission in its brief said -- and it cited

the Interstate case as being the case that said public

interest. If you go read again the Interstate case, it

deals with 19-31-20 and 21 that had specific statutory

requirements of public interest. There is nothing in the setting in the statute that allows the Commission to set up access rates in the rules that talks about public interest. The Supreme Court has reversed time and time again the Commission when its exceeded its statutory authority.

And I ask where is public interest to be determined as a fact by this Commission in setting switched access rates? It said fair and reasonable rates and the Commission, you can go ahead and set 1-26. They've had 1-26 regulations. They put 1-26 in and as applied to this case and this rate. Where is the public interest determination to be made? And they just, you know, unilaterally said it's in the public interest. You correctly pointed out there's no underlying fact to state that plus there is no legal authority for that finding.

What I want to conclude briefly with, your Honor, is the takings claim. We claim that the Commission's decision ought to be reversed because the decision in this case results in taking of US West's property. And the argument is relatively simple.

That is that US West is required to furnish its property to the public and to these other carriers, to provide long distance service through switched access rates. If these rates are unreasonably low and US West is

forced to use its property to provide facilities to these companies, that rate -- if it's too low it becomes confiscatory and that violates applicable constitutional provisions. And we claim, without a dispute, that we're providing residential rates below cost. The Commission has already made that finding in another docket. At the same time, we are providing local service below its cost as determined by the Commission, and we are now forced to provide switched access rates at below what we are entitled to under their rules. And we claim that's a takings. And so we believe that the Commission's decision ought to also be reversed on the takings issue alone.

The --

THE COURT: Did you argue takings to the Commission?

MR. WELK: No. It's a constitutional issue. And as we've talked about, we're not required to argue constitutional issues to the Commission. They can't adjudicate it. This is the court where we make the constitutional argument and we have made it.

I've already talked about the relief, your Honor. We've had the colloquy on that. Our request is that you either impose 6.14. And they say that just -- the substantial evidence doesn't exist. And my last comment is where is the Commission's substantial evidence to support its decision? What do they point to as

1 substantial evidence to support their decision? We  
2 believe there's none and on the record you can impose the  
3 6.14 by virtue of judicial review. You have an obligation  
4 to look at the record and you can determine if you believe  
5 that it's been clearly erroneous and an abuse of decision  
6 and find 6.41 rate is there.

7 If you don't want to make that factual decision, I  
8 told you today we're willing to accept the 5.5, accept the  
9 valid criticism. There's no need to have remand so that  
10 my client can go ahead and start charging.

11 If you need to remand, I suggest respectfully that  
12 the remand say that it be remanded to the Commission, that  
13 the rate be set between 6.14 and 5.5, that the remand be  
14 limited to only correcting its decision and on the record  
15 that's already there and that they be forced to enter the  
16 decision within a certain period of time, which I would  
17 believe would be between 10 and 20 days would be necessary  
18 to correct these findings.

19 With that, your Honor, I will hold the rest of my  
20 remarks until other counsel have had an opportunity.

21 THE COURT: Mr. Hoseck.

22 MR. HOSECK: Thank you, your Honor.

23 I submit to the Court that there is really an  
24 evidentiary question in this case and under the standards  
25 of SDCL 1-26-36, we're talking about the clearly erroneous

1 rule or the arbitrary and capricious standards.

2 I think that Mr. Welk's argument today emphasizes the  
3 point that I made in my conclusion in my brief and that is  
4 that a rate case should not be the equivalent of an  
5 auction. Because the record reflects that in this matter  
6 the 5.55 cents rate, Mr. Culp was asked if that was in  
7 fact US West's testimony or if they were adopting that  
8 position in any manner and he said no. I think that it is  
9 unusual to ask this Court to decide a matter that properly  
10 belongs before an administrative agency.

11 THE COURT: Well, I can shorten this. I probably am  
12 not going to set a rate. I just don't think I can do  
13 that. That's the Commission's job. That's their  
14 authority and I don't think I can -- I have authority to  
15 do that.

16 MR. HOSECK: Okay.

17 And secondly, there are a couple of statutes that  
18 apply here under the utility aspect of this. And one is  
19 49-31-18, which talks about -- that's the general statute  
20 that allows the Commission to adopt the rules for the cost  
21 study. And I would emphasize to the Court that that  
22 statute talks about the Commission being able to determine  
23 methods designed to determine and implement fair and  
24 reasonable access rates.

25 Secondly, under 49-31-12.4, in any type of a rate

case, the burden of proof is upon the company to prove its case that its rate is fair and reasonable. If I were to make two points in my argument, your Honor, the first would be that the rules are not an automatic thing as US West proposes. And secondly, the record that is before the Court indicates that the information before the Public Utilities Commission was unreliable for several reasons and that is the basis for their decision.

THE COURT: You're relying on the five -- the five things stated in the motion in that transcript?

MR. HOSECK: Yes.

THE COURT: Okay.

MR. HOSECK: Yes.

Back to the first point on these rules not being automatic. They specify, and in the rules cited by US West, which is 20:10:27:02, talks about charges that are to be computed, assessed and collected under these rules. It does not talk about these inputs. The inputs are the critical thing.

And what was before the Commission in terms of evidence, we had three different rates at one time that had been -- that were discussed in front of them that this alleged automatic cost model system had produced. And secondly, when it got down to the hearing we had in front of the Commission, US West essentially is cutting a deal



1 with staff and saying, we'll take their 6.1 cent rate.  
2 And now this 5.55 cents is determined, as I believe the  
3 word was "insignificant" in their brief.

4 This indicates, I would submit, a reasonable mind and  
5 the minds of the Commission, and I would hope the Court,  
6 that there is a problem here as to the evidence that was  
7 put on in front of them. And what did the Commission have  
8 to look at? They had the prime witness of US West, Mr.  
9 Culp, who swore to the truthfulness of the numbers, yet  
10 had no hands on responsibility with them. He was the  
11 supervisor.

12 THE COURT: You know, but experts do that in court  
13 every day.

14 MR. HOSECK: Absolutely. But it still is within the  
15 province of the Commission as to whether or not they want  
16 to give that type of testimony any weight or credibility.

17 THE COURT: But the problem here is I don't see a  
18 finding saying that the -- for instance, that the  
19 depreciation numbers were wrong and should be thrown out  
20 because A, B, C, D. What I see here is they're just  
21 saying we have concerns, we're not sure about these  
22 numbers. We don't feel comfortable with them. But there  
23 are no findings saying we should reject the depreciation  
24 issue because so and so established that it's not reliable  
25 in this context. There's nothing like that.

1 MR. HOSECK: That's true. That goes to the essence  
2 of what the Commission did in this case. That is, they  
3 basically said we're not satisfied with this record, we're  
4 going to reopen it. And they were told no, you got  
5 everything that you're going to get from us.

6 THE COURT: You know, the Commission has broad powers  
7 under that -- what is it, 7.1. I mean, they can get about  
8 anything they want. Why -- if they wanted to scrub the  
9 numbers and were uncomfortable with them and US West said,  
10 look, we think we presented our case, why didn't the  
11 Commission or the staff say, all right, here's a subpoena  
12 or provide us with this, provide us with that to satisfy  
13 their concerns?

14 MR. HOSECK: I think that the Commission looked at  
15 this in the terms of the burden of proof and featured in  
16 the company's burden to come forward and to prove its  
17 case. And essentially as a preliminary matter, the  
18 company was told that it had not proven its case and was  
19 given a second bite at the apple, so to speak.

20 Secondly, the staff had not done anything but rely  
21 upon secondary sources. They had confirmed no law data.  
22 There had been no random samples, no verification and this  
23 was obviously a concern to the Commission.

24 THE COURT: But the Commission didn't reject staff's  
25 testimony.

1 MR. HOSECK: They did not.

2 THE COURT: They expressed concerns and they did not  
3 do what they did to Culp. They tried to -- well, they did  
4 reject Culp, but they didn't reject their own staff  
5 witnesses.

6 MR. HOSECK: I think the primary reason for that is  
7 again, it goes back to the burden of proof that the  
8 company has. The staff really didn't have a burden of  
9 proof or at least if they had one it was not the same as  
10 that of the company, which is statutorily defined. I  
11 think that's the distinction.

12 THE COURT: But the way I see this case is US West is  
13 saying, hey, we're willing to rely on staff numbers, staff  
14 inputs, staff numbers. They're in the record. There's no  
15 evidence that I see in this record discrediting the staff  
16 conclusions.

17 MR. HOSECK: That's absolutely true. They -- but the  
18 corollary to that, your Honor, is that here we sit today  
19 and they're now saying they're willing to accept AT&T's  
20 numbers. That is not the way a rate case should be  
21 handled. It should be handled like any other type of  
22 quasi-judicial administrative proceeding where people come  
23 in, meet their burden of proof, put on evidence that is,  
24 at least in the eyes of the trier of fact, credible and  
25 should be given some weight. And that's -- that's the

1 bottom line on it, your Honor.

2 THE COURT: Well, then -- then let me ask you this.  
3 You know, the question is is there substantial evidence --  
4 under your theory of the standard of review, the question  
5 is is there any substantial evidence in the record to  
6 support the Commission's decision? The Commission's  
7 decision here is no increase. Zero increase.

8 MR. HOSECK: Yes.

9 THE COURT: What evidence -- not suspicion, not  
10 speculation, not conjecture, what evidence -- substantial  
11 evidence in the record is there to say that the rate  
12 should be 3 point -- what is it, 3 point something, 1.1 or  
13 something like that, what they're charging now. In other  
14 words, what evidence in the record is there to support a  
15 no increase, because that's what essentially happened  
16 here.

17 MR. HOSECK: The evidence -- the substantial evidence  
18 in the record, your Honor, is really expressed in terms of  
19 a negative and that is that there is nothing -- as based  
20 upon Mr. Culp's activities and the cost study and staff's  
21 activities, and so on and so forth, all those activities  
22 added together do not support the conclusion that the rate  
23 could be granted. And so in denying this, the Commission  
24 has said there was not substantial evidence in the record  
25 for us to make a decision. That's what there is. It's --

i don't know how else to express it other than it is in terms of a negative.

THE COURT: You mean an absence of evidence?

MR. HOSECK: Yes.

THE COURT: Well, if there's no evidence, then this decision can't be sustained.

MR. HOSECK: Well, but the -- if there's an absence of evidence, your Honor, then there's nothing to sustain the rate increase. That's the problem.

The rate increase -- the burden of proof is upon US West to come in and prove their case. It's not upon anybody else to prove it for them. And if they did not come in and prove their case, then the Commission really had nothing to work with. It goes back to the basic theorem of my brief and that is that the record was inadequate. It's a question of fact. And there was nothing in there to sustain the granting of this fact of this rate increase and that was fair and reasonable under the statutory standard.

THE COURT: But there is evidence in the record to sustain some kind of rate increase. I'm going to read right from your brief. You say, "Depending on what cost study or whose analysis the PUC would believe, the switched access rate ranged from 6.4 to 5.55."

Now, that to me says that you've conceded there's

1 evidence in the record, depending on who you're going to  
2 believe, that there's a range of numbers from which the  
3 Commission should make a decision.

4 MR. HOSECK: I'm not sure that the Commission found  
5 that because ultimately that thing, as I recall you're  
6 reading it, said depending upon what was said and whose  
7 cost study.

8 THE COURT: "Depending on what cost study and whose  
9 analysis the PUC would believe --

10 MR. HOSECK: Yes.

11 THE COURT: -- the switched access rate ranged from  
12 6.4 to 5.55."

13 MR. HOSECK: I think the key thing there, your Honor,  
14 is who they believe, who they give any type of weight and  
15 credibility. They basically made an initial decision that  
16 they were not satisfied with anything that was in front of  
17 them and attempted to reopen the record.

18 THE COURT: They didn't reject staff.

19 MR. HOSECK: They didn't reject -- that's right.  
20 That's right.

21 THE COURT: So the staff numbers are there.

22 MR. HOSECK: Staff numbers are there.

23 THE COURT: How can they be rejected? You know, the  
24 statute says that this Commission's duty is when this  
25 occurs, when someone files a tariff stating a new rate,

1 that, you know, you have the hearing, et cetera, you have  
2 the potential for unilateral implementation and it's --  
3 you shall have a hearing. And then it says after the  
4 hearing the Commission's obligation or duty under the  
5 statute is to "determine a fair and reasonable rate or  
6 price, render a written decision specifically setting out  
7 the rate or price and prepare a record of its proceedings  
8 and findings."

9 Now, I mean in your brief you say that there was  
10 evidence of a range and rather than doing this statutory  
11 duty, it looks to me like they just dumped the case.

12 MR. HOSECK: Well, I disagree in this sense. And  
13 that is if you look at what staff did in terms of staff's  
14 rate in this matter, I think that the Findings of Fact  
15 showed that nobody had done any independent verification  
16 of numbers. That was of concern to the Commission.

17 THE COURT: But they've never done that before. They  
18 -- I read their testimony. And they were obviously  
19 satisfied -- they had this dialogue with US West. They  
20 said, well, we don't agree with you. I think there were  
21 nine points in dispute, if I remember the record right.  
22 And they said, US West, give us this information, give us  
23 this, based on the information they requested, they were  
24 comfortable with their numbers.

25 And they didn't -- they -- as I read the record, they

were specifically asked, did you read Parker's -- did you hear or read about Parker's criticism, and did you hear these other criticisms. And inspite of that, I don't see any evidence that any staff said, well, yeah that's a point well taken. No, they stuck to their pre-filed testimony.

MR. HOSECK: But ultimately, your Honor, at Finding of Fact XXV, the Commission found that inputs into US West's cost study had not been adequately verified. That was the Finding of Fact that I would submit to the Court is very critical in this as far as forming a basis of the Commission's decision.

THE COURT: Well, which inputs and why aren't they adequately verified? I mean, don't we have an SDDS problem here?

MR. HOSECK: Well, no, your Honor, because I think if you go back to Findings of Fact VII, VIII, and IX, there is a specific -- there are specific findings as to the actions of staff in this matter. And it was that there had been nothing that had been done to confirm the inputs.

There was -- the bottom line on this thing, your Honor, is that there was obviously a question, the evidentiary shadow, whatever you want to call it, in this case that when three cost studies were brought before this Commission, three different rates went in, an acceptance



of staff's position, a cutting of a deal in essence in the presence of the Commission for the 6.1 cents, there was a question raised in the minds of the Commission as to the adequacy of the job done in looking at the inputs to this cost model. That was the critical thing that they were not comfortable with. And they asked that it be done again and that somebody look at this and it wasn't done.

THE COURT: That's obvious. The problem I see is they did not reject the staff numbers. At least the Findings don't say that. They expressed concern. They say well, you know, he didn't do this, he didn't do that, but they said -- they didn't do what they did to Culp and say therefore, we reject staff.

MR. HOSECK: As to a specific finding specifically saying we reject staff, that is correct, your Honor.

However, when you read the entirety of this -- of the Findings of Fact in this matter, there is a tie in between what staff did or didn't do and the ultimate conclusion that there was not an adequate verification and that there was not a meeting of the burden of proof by the company. And that's what it all relates to.

I would submit, your Honor, that the Commission properly found that no weight should be given to the cost study, and that Mr. Culp's evidence and his testimony was not credible.

As to this matter of the public interest determination, I would submit to the Court that this is always a consideration that the Commission could properly look at. And for most in this matter, I think that the deficiency in the record that was before the Commission was a legitimate grounds. If nothing else, this was a legitimate ground for the exercise of the public interest doctrine by the Commission because the question is if any of these rates would have been implemented, what was there to back it up? And I think that there -- the record amply demonstrates that there is a deficiency in that record.

Again, I would submit, US West did not meet its burden of proof in this matter. There were numerous conclusions as to what rate is the proper rate in this case. There were questions that were raised which were not answered for the Commission and the Commission took the proper action in this case by denying the request.

Briefly on the takings issue. I think this fails on a ripeness issue. And it gets down to a more fundamental thing and that is that US West does not have any type of inherent, inalienable right to a rate increase. It is a matter that is subject to proof. And the question here under the clearly erroneous standard is has a mistake been made. I don't think that one has.

And in conclusion, your Honor, I would ask that the

1 decision be affirmed. I don't think remand would serve  
2 anything in -- any purpose in this case. In essence, US  
3 West was offered that opportunity at one point in time and  
4 it was -- it was denied. They did not -- did not take  
5 advantage of that opportunity. And I would respectfully  
6 ask that the Court affirm the Commission's decision.

7 THE COURT: Thank you. Okay. Who wants to go next?  
8 Mr. Lovald.

9 MR. LOVALD: If it please the Court.

10 I'm not going to retread ground that Mr. Hoseck has  
11 already covered. In fact, I'm going to try to focus on a  
12 couple of, what I perceive to be, extremely critical  
13 points that Mr. Welk has ignored that I think point out  
14 the fact that the Commission's decision in this case was  
15 proper, and was the only decision that could have been  
16 made and should be sustained.

17 US West chastises the Commission for having taken  
18 public interest matters in consideration in this case. US  
19 West would like the Court to believe that the switched  
20 access rate increase it sought was sort of like picking  
21 fruit off a tree, that if you stuck these inputs into the  
22 computer and it spits out 6.5 and that they had to be  
23 given 6.5. And that just isn't necessarily true, your  
24 Honor.

25 If you'll review the switched access rules that US

1 West now wants to apply and wants to immediately use to  
2 justify their increased rate, there's -- there's a section  
3 of those rules, which I think the Commission cited in  
4 their brief as ARSD 20:10:27:20. It's a phase in rule.  
5 It says that if the Commission determines that there's  
6 going to be a substantial increase in an access rate, that  
7 they have the discretion to phase that rate in over a  
8 period of time. That was argued at the Commission level.  
9 Evidence was presented.

10 The Commissioners in some of the statements in the  
11 record said this case presents rate shock of the worst  
12 type. And basically, the Commission never got to that  
13 point. The Commission -- I think part of the argument  
14 was, you know, the decision is between 6.14 and 5.5. I  
15 submit, your Honor, the decision is between 6.14 and 3.14.  
16 I think an excellent argument can be made and was made to  
17 the Commission that let's phase this thing in and the  
18 first step of the phase in was probably 3.14 to get you to  
19 your decision.

20 There's another docket that's open in the PUC right  
21 now, 96 -- I think it's 032. The Commission solicited  
22 input from all of the telecommunications carriers over  
23 whether they should make any revisions in their switched  
24 access rules. Inputs were provided. No decision has been  
25 made in the docket. And I think there's a pretty logical

1 argument if phase in is used by the Commission that step  
2 one is 3.14 until you get to the determination as to  
3 whether there's going to be any change in the rules.

4 But I wanted to make that point, your Honor, because  
5 the Commission -- and you can tell from the comments that  
6 were made in the Findings, you can tell by Commissioner  
7 Burg's reference in the record to the yo-yo effect, that  
8 they were concerned with the situation if we take the rate  
9 now and the rate drops back down, you know, that doesn't  
10 do anything for consumers. It doesn't do anything for the  
11 small companies.

12 And I just want to clarify the record on the point  
13 that public interest is involved, was involved and I  
14 think, you know, they took an appropriate look at it.

15 I'd also --

16 THE COURT: But isn't it the Commission's decision to  
17 do that phase in?

18 MR. LOVALD: Yes.

19 THE COURT: I mean, a utility can say, I want it all.  
20 But it's the Commission's responsibility.

21 MR. LOVALD: It's the Commission's decision and the  
22 Commission never got there, your Honor, because the  
23 Commission said we're not satisfied with the inputs.

24 And I think it's part of the record, but when we  
25 filed our reply brief at the Commission level, we filed a

lengthy decision of the Washington Utilities Board in response to a US West rate increase in the State of Washington where they were requesting rate increases. The Commission out there after an audit determined that a 91.5 million decrease was appropriate and that included about \$29 million worth of switched access decreases. So the Commission had that information in front of them too.

And Mr. Welk says this is unprecedented and the Commission has never subjected any other utility to this sort of scrutiny, but again I think you've got to look at the history of this, your Honor. These rules were adopted in 1992 by the Commission. US West up until 1996 consistently took the position, we don't want them, we don't need them, we're not going to price according to them. Mr. Welk criticized us for not talking about the Telecommunications Act, but I submit, your Honor, that their attitude changed when Congress passed the Telecommunications Act. And they basically took the immediate flip-flop of the position we now want, the -- you know, the revenue stream that that would provide and we want it now and we want it all.

THE COURT: How is that relevant to whether there's substantial evidence to support zero increase in this case?

MR. LOVALD: You know, it's relevant, your Honor.

1 because if they were to have received that entire  
2 requested increase, it would have had a tremendous impact.  
3 I think the testimony from Mr. Riter's client is in the  
4 record in that respect -- and that record was the record  
5 that was before the Commission -- they were prepared to --  
6 you know, they were prepared to go to the next step and  
7 take additional --

8 THE COURT: Except that you filed the motion to  
9 dismiss.

10 MR. LOVALD: Correct. And, your Honor, I guess --  
11 you know, I guess the point is that where you have the  
12 phase in statute that was there, and where the Commission  
13 knew that the phase in statute was there and wasn't  
14 satisfied with the record and where US West says even  
15 though you're going to give us another hearing and another  
16 opportunity, we're going to unilaterally implement the  
17 rate, I would submit, and on the basis of record before  
18 the Commission, that they did the only right thing.

19 THE COURT: Well, except the statute says it gives US  
20 West, it looks to me, like the right to unilaterally  
21 impose any rate that's -- whether it's fair and reasonable  
22 or not. But they've got to -- after the Commission has  
23 the hearings, does the investigation, makes the findings,  
24 they've got to pay it back. Isn't that what the statute  
25 contemplates?

1 MR. LOVALD: Yes, your Honor. I think it does. And  
2 I think -- but at the same time where the burden of proof,  
3 I think the Commission Findings are clear. They didn't  
4 feel that US West had met its burden of proof on all of  
5 the factual issues. If you're faced with number one, do  
6 we give them another shot and let them unilaterally  
7 implement or do we dismiss the case on the basis of  
8 insufficient record and let them come back in tomorrow and  
9 start anew? I think they made the proper decision.

10 THE COURT: Well, going back to your public interest  
11 and the phase in and the impact on the other companies.  
12 As I read this motion that was adopted to reopen the  
13 record, there's five factors they were concerned about and  
14 three of them involved what you're talking about, public  
15 interest, impact on the other carriers and all that. It  
16 seems to me that the impact on the area carriers is  
17 evidence that you guys had the responsibility for. And it  
18 seems to me that those three -- at least those three  
19 issues, there were five of them that I count, but of those  
20 three, that was your obligation to present evidence on  
21 that. How could US West be faulted for not providing  
22 evidence on how this was going to impact you and  
23 therefore, the phase in should be as follows, et cetera,  
24 et cetera, et cetera.

25 MR. LOVALD: Your Honor, I read the Commission's



1 findings and decision, you know, when they made the  
2 decision to reopen, there was ample evidence in the record  
3 presented by Mr. Riter's clients, the TAG group, that  
4 there would be a substantial impact. I read the  
5 Commission's -- I basically read the Commission's decision  
6 to reopen as basically in telling these companies, you've  
7 told us in conclusionary terms that it's going to affect  
8 you substantially, but if we're going to go back anyway,  
9 let's have some more detail. I would agree with you that  
10 I think --

11 THE COURT: But the detail -- that detail did not  
12 come from US West.

13 MR. LOVALD: No, that's true.

14 THE COURT: That detail -- so why should they dismiss  
15 the case on those factors, rate shock? The actual motion  
16 is the specific effect of any raise in access charges on  
17 the small resellers, such as those represented by the TAG  
18 group. How can you -- why should the motion to dismiss be  
19 granted for failing -- for failure to present evidence on  
20 this when obviously US West couldn't do that? That was  
21 your guys' responsibility.

22 MR. LOVALD: You know, I agree that the burden on  
23 rate shock was probably, you know, probably on our side of  
24 the table, your Honor. But again, I would urge the Court  
25 that the Commission's decision to dismiss on the initial

1 input item, you know, was more than justified. And I  
2 think the Commission has inherent authority any time a  
3 company makes a request to request additional information  
4 and request the additional scrubbing as to any number or  
5 any aspect of the case that it desires information on.

6 I want to get back -- before I sit down, your Honor,  
7 I want to talk about the represcribed depreciation issue  
8 because I think this is a glaring deficiency in terms of  
9 what happened in that particular case. The Commission  
10 approved the stipulation that I think is in the record as  
11 an exhibit, in TC 94-121 giving US West some pricing  
12 flexibility and the stipulation purported to deal with  
13 local rates, business rates, but also dealt with -- dealt  
14 with switched access.

15 One of the Commission findings in that particular  
16 docket was that the commencement by US West to utilize the  
17 represcribed depreciation bond have any effect on US  
18 West's customers. It's about a three-year stipulation, I  
19 assume, you know going forward from the time it was  
20 approved in early January.

21 But one of the first things that happened in mid-1976  
22 is US West used the represcribed lives, which are  
23 shortened lives, which means you shorten the life, you're  
24 going to kick your cost up. And in its switched access  
25 runs and one of the criticisms by the parties to the

1 proceeding before the PUC is that that very action in  
2 using represcribed depreciation violated and was directly  
3 contrary to the Commission's finding in the previous  
4 docket. But it also highlights part of the problem with  
5 witness Culp because when he was being questioned on some  
6 of the depreciation issues he just basically said, well,  
7 I'm not a depreciation expert. You know, you couldn't get  
8 the information.

9 And I invite the Court to read his testimony closely  
10 because there was an arrogance there and I think there was  
11 an evasiveness when he was being asked questions by  
12 attorneys in terms of providing as little information as  
13 he possibly could to the inquiry process. And I think the  
14 Commission got frustrated with that.

15 But I -- like I said, I'm not going to cover points  
16 that Mr. Hoseck has already made, but in conclusion, I  
17 would respectfully submit that on the basis of the entire  
18 record, you should affirm the Commission's decision.

19 THE COURT: Just so I understand though, on the  
20 depreciation issue, even if your point was adopted, as I  
21 understand the record, that still would get you no lower  
22 than 5.5.

23 MR. LOVALD: That would get us no lower than 5.5,  
24 your Honor, but it also, your Honor, would get us to the  
25 point where the Commission still has got to look at it, I

1 think, as a phase in situation. Even if you said that's  
2 all that the record determined, there's still an  
3 unanswered issue hanging out there that I think would  
4 totally prohibit any finding at this level of a particular  
5 rate or mandate that they adopt a particular rate.

6 THE COURT: Well, okay. Well, on the phase in issue.  
7 what else was US West obligated to do at that second  
8 hearing to establish an appropriate phase in? What  
9 evidence could they have offered in addition to what  
10 they've already offered?

11 MR. LOVALD: I don't know, your Honor.

12 THE COURT: Well, there isn't any, is there?

13 MR. LOVALD: Again, I don't necessarily disagree with  
14 you at that second hearing that the TAG members would have  
15 had to present some additional testimony to the  
16 Commission. But at the same time, I think if you look at  
17 the existing record, there's quite a bit of testimony  
18 already on rate shock.

19 THE COURT: But then it was the Commission's  
20 obligation to make that decision of how to do the phase in  
21 based on the evidence from the other members of the public  
22 -- or the other carriers, right? Shouldn't it have been  
23 their obligation at that point?

24 The statute says after hearing they are to determine  
25 a fair and reasonable rate, render a written decision

1 specifically setting out the rate, and prepare a record of  
2 the proceedings.

3 MR. LOVALD: I guess I disagree with you on that  
4 point, your Honor, because I still feel they have inherent  
5 discretion if they feel that the basic inputs haven't been  
6 justified that they --

7 THE COURT: You just switched. I'm trying to keep  
8 you pinned down here to the public interest and impact on  
9 the other parties.

10 MR. LOVALD: Yeah, I will agree with you to this  
11 extent. You know, if you have to -- if you accept the  
12 fact that there's a certain number on the table that is  
13 irrefutable and indisputable according to the record, then  
14 I would -- then I would agree with you, your Honor, that  
15 then the Commission would have had to move on and say  
16 okay, what do we do, if anything, with phase in? But I  
17 guess I disagree with the assumption that we ever got to  
18 the point where that number was clearly established to the  
19 point that the Commission had to accept it.

20 THE COURT: The Commission concedes in its brief  
21 though there was a range.

22 MR. LOVALD: I don't read -- I don't read that  
23 sentence in the brief as a concession, your Honor.

24 Thank you.

25 THE COURT: All right. Mr. Harmon.

MR. HARMON: Thank you, your Honor.

Tom Harmon for Sprint Communications. And I will do my best to address points that have been brought up here and in Appellant's reply brief regarding what occurred here below.

The standard of review issue that this is a mixed question of law and fact, I believe, this is adequately addressed that that is the Commission's obligation to make this -- what is essentially an ultimate fact finding as to what is a fair and reasonable determination. Nowhere do I see that there is any switch of burden to anyone else.

The -- there have been some discussions here this morning about whether this range is between 5.55 and 6.4. The presumption that supports what the Commission did is that the status quo is correct and requires no further proof of the matter. US West had an obligation to bring it forward and it attempted to do so. It attempted to do so through Mr. Culp and through the cost study.

The Commission rejected Mr. Culp and it rejected the cost study analysis through the rules. The Court has pointed out that it did not specifically reject the credibility or findings of staff. However, it did reject the underpinning assumption that in both US West and staff and that they were the inputs into the cost study. The Commission did not feel --

1 THE COURT: Which inputs?

2 MR. HARMON: They've been established.

3 THE COURT: I didn't see any inputs -- any particular  
4 inputs being rejected and other -- any reasons for  
5 stating -- for rejecting a particular input.

6 MR. HARMON: They essentially indicated that they  
7 were not convinced.

8 THE COURT: They are uncomfortable as best I can see.

9 MR. HARMON: By the figures that were there.

10 And one of the points that I think is raised here is  
11 that there's a lot of talk about the ARMIS study. As far  
12 as I can tell in reading through the transcript -- I was  
13 not present at the hearing -- I don't think it was ever  
14 moved into the record.

15 THE COURT: But the experts all relied upon it. I  
16 mean, that's pretty standard practice too. I've never  
17 read one of those reports, but it looks to me like  
18 everybody relies on them.

19 MR. HARMON: That does appear to be the case. It  
20 does not appear to be the record in this case.

21 The -- US West argues in its reply brief about  
22 meeting the burden of proof. Sprint raised an argument  
23 about that there had been no evidence submitted whatsoever  
24 regarding the fairness issue. And the statute clearly  
25 requires that this be fair and there be some proof brought

forward to do it.

US West's response to this is that if you run it through the computer model, that's how you conclude whether it is fair. I would submit that that's not what the rules say. Even the rules set out by US West in its reply brief, ARSD 20:10 -- 20:10:27:02 says that -- 10:27 and 10:29 establish rules for determining switched access rate charges for switched access services shall be computed, assessed and collected as provided in these chapters. Nowhere does it say that they will be approved through that process. The approval requires the Commission to make a determination that there has been a fair application. The Commission concluded that there was no proof.

When you look at this question that the Commission asked, it was clearly addressing itself to the fairness issue -- the rate impact. The resellers will talk as to how that applied to them, but that evidence was submitted. US West has exactly the same kind of discovery mechanisms available to it to determine whether the 106 and 115, 120 percent rate increases, whether that has a negative effect upon the resellers and the public as it was testified. They have those tools available to them. They chose not to do so.

THE COURT: Well, but wait a minute. I'm reading



1 from the record here and this -- and Commissioner  
2 Schoenfelder made the motion which was adopted and she  
3 says, "These companies --" and she's referring to the  
4 resellers "-- have not come forward with specific numbers  
5 which would allow me to assess the effect in quantifiable  
6 terms."

7 In other words, the resellers have not presented  
8 alternatives to the results of the cost model. Now,  
9 should the case be dismissed against US West because the  
10 resellers failed in their obligation? That's what I hear  
11 you arguing.

12 MR. HARMON: It appears that there is evidence in the  
13 record of the effects upon the resellers. There was no  
14 representation of that record so far as I can see.

15 THE COURT: Well, you're saying that US West had the  
16 burden on this issue?

17 MR. HARMON: I don't see that US West's burden ever  
18 switches in this matter of proving that the rate increase  
19 that it is proposing is fair and reasonable. That's what  
20 the Commission identified in its findings as the public  
21 interest determination is about.

22 THE COURT: So you think US West has the burden in --  
23 I'm reading from her motion -- to come forward with the  
24 specific numbers which would allow the Commission to  
25 assess the effect on the resellers in quantifiable terms?

1 MR. HARMON: Once something had been presented and  
2 something had and it is in this record and it's not been  
3 rejected that there was this rate shock impact possible,  
4 and that it would have negative effect on them, US West  
5 had the burden. I submit the burden never did change.  
6 But it had the burden to establish that there was  
7 something wrong or that that was not the case.

8 The constitutional issue as to the taking has been  
9 addressed here. The cases cited by US West in its reply  
10 brief have to do with a Commission -- with an agency  
11 making a determination of whether the statute under which  
12 -- which it acts is constitutional. We would have no  
13 disagreement with that that agencies cannot make a  
14 determination as to whether a statute is constitutional.

15 Whether they can apply the constitutional standard of  
16 whether something is a taking is quite another matter  
17 because it does not go to their actual ability to act.  
18 This issue was not presented to the Commission in any form  
19 and if it is to -- if it is to make up part of the bundle  
20 of standards by which a rate increase is to be judged,  
21 then it would seem absolutely essential that it be  
22 presented to the body that by statute has the authority to  
23 make the rate increase.

24 There was some discussion about the records that were  
25 submitted, the cost study, and that it falls under the

business records exception in the reply brief. There's no mention of a 1992 opinion by our Supreme Court of State v. Brown where it sets out what is required foundationally in order to apply to the public records exception. And that did not appear to be the testimony from Mr. Culp regarding records upon which they relied.

Sprint would urge the Court to affirm the Commission's actions.

THE COURT: Thank you. Mr -- who's next?

Mr. Sahr.

MR. SAHR: Good morning, your Honor.

The first issue that I would like to address is the standard of review that should be applied in this case. And again, I will look to Permann which discusses whether the review is one of fact or one of law. And Permann says that if the application is of the -- if it's an application of a rule to law and it's essentially factual, then the review should be under the clearly erroneous standard.

And for instance, in this application that depends upon the fact finding tribunal's experience would be one that they -- that relies on looking at the facts that are presented to the tribunal. And I think there's a case that's on point in this matter and it's the Matter of Northern States Power, 489 NW2d 365. And it discussed

the question of whether facts or law were involved.

And as it's been presented to the Court it talks about how the questions of fact are given greater deference. And specifically addressing the Public Utilities Commission, the Court in that case said that it would not substitute a judgment for the PUC on the weight of evidence pertaining to questions of fact unless the PUC's decision is clearly erroneous.

And later in that same decision, the Court goes on to say that this Court has previously stated that the PUC is deemed to be an administrative tribunal with expertise. Thus, we think it is inappropriate in a situation such as this for the Court to defer to the PUC's expertise in matters which lie within its particular field of knowledge. And I would submit to the Court that this is a -- we are discussing matters that lie within the Public Utilities Commission's expertise and that are based on factual issues. And the case is fact laden.

Looking at SDCL 49-31-12.4, 3, the telecommunications company that is filing for a tariff bears the burden of proof to show that the tariff is fair and reasonable. SDCL 49-31-1.4 lists the factors that should be considered in determining whether a price is fair and reasonable. And those include the price of alternative services, the overall market for service, the affordability of price for

1 the service and market in which it is offered, the impact  
2 of the price of the service on the commitment to present  
3 affordable uniform service and fully allocated cost of  
4 providing the service. And these are all factors which  
5 are again fact laden. So I would submit to the Court that  
6 the clearly erroneous standard should apply.

7 When looking at the facts, the Commission was  
8 uncomfortable with the results of the computer model. And  
9 I think that in that conclusion that there are underlying  
10 reasons, whether stated or not, that they were  
11 uncomfortable. And I think it comes down to that they  
12 were uncomfortable with some of the data and the ability  
13 to verify that data. And perhaps it was not stated in the  
14 Findings of Fact, but I think it comes down to that if the  
15 inputs are questionable then the results are questionable.  
16 And perhaps they concentrated too much on the results, but  
17 I think that they were in fact looking at the inputs as  
18 seen in the results.

19 Under the clearly erroneous standards, MCI believes  
20 that the decision of the PUC should be affirmed and that  
21 the burden is on US West to show that the tariff is fair  
22 and reasonable, that the PUC was in the best position to  
23 judge the witnesses and their credibility and what sort of  
24 weight they should give to the evidence that was presented  
25 to it? And they gave very little weight to the US West's

positions. And US West was in fact given a second chance to offer more -- offer more testimony and they refused.

And for all these reasons, MCI believes that the decision of the Public Utilities Commission should be affirmed.

THE COURT: Okay. Mr. Riter.

MR. RITER: Thank you, your Honor.

If it please the Court and counsel. I realize there's been a lot of arguments already to the Court and I think, however, that some of the thoughts I'd like to share with the Court are important to the decision in this matter.

We represent the Telecommunications Action Group, which is a group of five resellers. Four of the five only do business in South Dakota. One of them does extend across state lines, but four of the five only do business in South Dakota.

And as the evidence revealed and as the PUC found, the rate increase proposed by this switched access rate was very significant to all of these people. And as some of the testimony revealed, they said that 50 percent or 60 percent of their direct costs were these switched access rates. And they also testified that perhaps 100 -- some of them said even more than that, even 125 percent increases in switched access rates would mean significant

increase on them and their direct costs. Some of them also testified that they had contracts where their subscribers and under the contracts with their subscribers, they could only increase it 10 percent a year.

So you're going to have -- if the Court were to -- if the PUC would, rather, have adopted an increase such as suggested by US West, it would have had a severe impact on competition, not just merely upon resellers or small business people doing business in South Dakota that we represent, but the people out there, consumers out there that are now able to receive some good rates because of the competition in the market place.

And there's been -- there's been argument relative to the federal act and, you know, what's the impact and how come we didn't talk about it. But the underlying basis for the federal act was to foster competition. And if we're going to foster competition, we're not going to increase the rate by 125 percent to these resellers and then increase their direct costs correspondingly so they can do business. They can't compete with US West. And I suspect if I was US West, I'd love nothing more than to eliminate some of my competition. And we think that the rates that would be a result of the increase requested by US West would eliminate competition or have a severe

opportunity -- significant opportunity to eliminate.

Now, the Findings of Fact set out the specifics of the testimony and if you might, you've got five reseller companies in South Dakota. All of their small companies are small South Dakota companies. They're competing out in the field with the big companies, all of whom you've heard from this morning, and it's not an easy task to be faced with, frankly.

Also, they're faced with the difficulty and the Court pointed out, well, couldn't they have produced more evidence about something in particular, but you're faced with the situation where we've got Jerry Noonan, who is a certified public accountant; we've got Fred Thurman, who is a certified public accountant. Those individuals, we believe, are qualified to express expert opinions and not only as certified public accountants, but as presidents of their various companies relative to the effect that this would have on them.

Now, we didn't have a cost model. There was some comment made in one of findings about the small resellers did not present alternatives to the cost model results. But yet the issue -- and I think it was Mr. Harmon perhaps that pointed it out -- the issue is whether or not US West sustained its burden of showing that these rates were fair and reasonable that they proposed to the Commission. And



we suggest they did not. And I have realized that the Court is saying, well, wasn't -- was it not the burden of small resellers to show why they weren't fair and reasonable.

THE COURT: Well, only on one point. I'm not suggesting that you had any burden on the fair and reasonable nature of the rate. I think your -- you guys were implicated because of the motion to reopen with respect -- you were implicated on the issue of the impact that it would have on you and public interest. I mean, at least that's what Commissioner Schoenfelder, that was the basis for her motion anyway.

MR. RITER: When you look at the situation that all of us were faced with nine months ago, obviously the Public Utilities Commission was not satisfied with the evidence they had, that it justified the rate that it showed that the rate was fair and reasonable.

By the same token, they were -- they felt that there was not sufficient other evidence available for them to establish a rate and they had like more information. So it seemed logical to them and sitting back to me it seems logical to see that they said, let's reopen this, let's take some more evidence, let's make sure everything was proper and appropriate. And then US West said no, well if you do that we're going put in these rates anyway. And

what are the rates going to do my people, by the time we are all done with everything, they can pay us back some money, but what good does it do from a practical standpoint when you get paid back something if you're still barely hanging on to your business if you're hanging on at all?

THE COURT: Look, I don't think the issue is what good is it going to do or even is it fair. The question is what does the statute say.

As I read the statute, if the Commission doesn't make a decision in 180 days US West can implement the rate and then you go through the process, determine the fair rate and if it's not fair, they've got to refund. I mean, that might not be fair, but it seems to me your remedy is with the Legislature.

MR. RITER: I don't disagree with that, your Honor. And as you pointed that out earlier to Mr. Welk, why doesn't he go ahead and implement it right now? They've got authority under this particular statute to do it.

Obviously, I think US West is acting under the same sort of attitude that all of the people here today are and that is that they want to proceed properly and appropriately and frankly, they don't want to put hundreds of thousands of dollars or millions of dollars at risk by having to pay it back should there be some reversal at a

later time relative to that. And I'd like to think too that US West is saying, we want to do what's ordered and was fair and determined to be fair and reasonable by the Public Utilities Commission. And that's why they haven't unilaterally gone out and put some rate in even if they've got the authority to do it.

We think that if the Court were to remand this case, that the Public Utilities Commission perhaps could then have the opportunity, if the Court allowed it, by the remand to hear such evidence as might be appropriate to determine whether or not the rate was fair and reasonable. It would seem to us that if a remand was ordered that would not have to be limited to the record existing, but that the Court could also order that there be such evidence.

We've got issues about Mr. Culp and whether or not there was sufficient foundation for his testimony and whether it should or should not have been accepted and whether they were audited and verified. And certainly, this would give US West the opportunity to come forth with that evidence.

Additionally, it would allow our people the opportunity, if the PUC thought there was additional questions relative to the small resellers and how this impacted them, they would have the opportunity to present

that evidence should the Court order a remand. And I'm not suggesting that it did do so because obviously, it would seem to me that US West would still have the opportunity now to file an additional rate and ask for a new docket to be open.

But -- and when we talk about where we are at this time, if you look back at one of the records -- and we mentioned it in our brief -- Mr. Heaston, who's the lawyer from -- the lawyer Mr. Welk works with most generally, stated in a letter to the PUC back in 1993, I believe, that he thought that because how important -- I'm paraphrasing and I don't have long and Mr. -- I'm sure Mr. Welk will correct me if I don't get it close, but the effect was we don't think that the rate ought to be from a lower figure to a high figure in one step because of the fact that this is such a significant expense upon the resellers and such a -- plays such a significant portion of their direct costs that the only fair way of doing it is the phase in.

So the Public Utilities Commission back in '93 adopted this rate of 3.14 and during that period of time from then until now, the US West never came forward and said, let's phase in an increase based upon we'll go to 3.75, then we'll go to 4.25. They didn't even take the advice of their own counsel at the time and suggest phase

in. Instead, they jumped right up to a rate that frankly, is confiscatory as far as my people are concerned.

THE COURT: Well, their failure to do this in the past, how is that relevant to whether there's substantial evidence in the record to support a decision of no increase?

MR. RITER: Well, I think it supports our argument that an increase such as US West has suggested is not fair and reasonable and that the PUC was right not to accept US West's requested increase. And they were right to close the docket as opposed to accepting that if those are the two alternatives available because even US West's own people, own representatives, affirmed that in fact that would be improper manner, at least arguably from our standpoint, an improper procedure, improper way to increase the rates to the point that they ultimately want them to be.

Our people got -- why all this came about is US West apparently because they've got the information necessary, they computed what impact would be upon our various resellers and supposedly they sent the same letter to AT&T, MCI and Sprint and everyone else, but the resellers got a letter from them saying with this new rate, by way of access charge, your total access rates are going to be up. And some were 78 percent and some of them were 129

percent.

We would argue from a public interest standpoint, from a standpoint of what is fair and reasonable, that the rate increase US West sought in this case was neither fair and reasonable nor was it in the best public interest, not only to our people, but to the competition that we have brought to the market place and the consumers that take advantage of the rates that are available to them by virtue of competition being there.

So accordingly, we would ask that the Court look at the issue and affirm the decision of the Public Utilities Commission. If the Court does order remand, we would ask that the Court order that the remand include issues that may not yet be -- that may not be in the record, but allow the record to be supplemented by additional evidence on the remand.

Thank you, your Honor.

THE COURT: Okay. Mr. Welk.

MR. WELK: I'm getting used to being by myself up here and having others argue against me and so I'm not going to go through every one of the points that have been made by the counsel because I think a lot of them have been addressed in the briefs.

Your Honor, you've asked time and time again of opposing counsel under the review that this Court is

mandated to do under 1-26, where is the substantial evidence to support the Commission's decision. And no one has given you an answer. Each one of the people that come up here and they talk about rate shock, they talk about that. Mr. Hoseck couldn't answer your question. And the question is very simple. There isn't any evidence to support the Commission's decision. What is in the record that is undisputed remains undisputed.

US West had the initial burden of going forward. It did along with the staff as you correctly pointed out. No one challenged the staff. The staff's testimony remains undisputed. And we met our burden of going forward.

Where is the rest? Where is the opposition at? At some point in time the burden must shift and we came forward with it. The staff came forward. The burden has got to shift. We came forward. We met the burden. The burden has got to shift to someone else.

THE COURT: Did you agree though that the Commission -- I mean, if they don't like -- if they're not comfortable with their numbers they at least have the right to investigate and do what kind of an exam --

MR. WELK: Sure they do.

THE COURT: -- they want to verify your numbers?

MR. WELK: They can go down, as the Court pointed out, and they do that time and time again. They don't

need a subpoena. All they got to do is pick up the phone and call down. But that's not what this is. This is an adjudicatory proceeding and if they want to go down there now and look at the numbers, do what they want to do and bring us back and say we didn't agree with that they can do that. But in this proceeding, we presented the evidence and nobody else presented their evidence.

It's very interesting listening to AT&T. They stood up with me at the time and said we don't need another hearing. Now they're talking about remand, going back and all that. Sprint and these other companies, they never even ran the cost model. I mean, what do these rules mean if you can't at least abide by the methodology.

And like I said before, you do have a dispute between 6.14 and 5.5 and that's what these rules contemplate. But the Commission, as you correctly pointed out, said no, no rate increase. What's very interesting is none of the companies told you, your Honor, they have known, they have feasted off this rate of 3.14 for three years.

And Mr. Riter is right. Mr. Heaston did write a letter back in '93 and said, yes, if we move this up to a 6 rate based on the '93 cost study, it would be rate shock. And US West said, let's start phasing it in. Well, the problem is 3. -- it's been 3.14 for three years. They've had this rate. They've had their phase in. They



should have known and these are reasonable, prudent business people. Everybody knows that, your Honor, on reseller standpoint this is their big cost of business. I mean, since the day you get into business, they know that.

And some of the contracts that they have, they've allowed for increases. I've asked in cross-examination at the hearing, don't you provide that when a major one of your inputs goes in, you can reprice. They said, yeah, we can reprice. We don't know what's going to happen.

All these were issues that are not relevant to the situation of whether the evidence was presented by US West. We've said the evidence is there. Where is the Commission's evidence other than some concern?

I do want to talk about the public interest situation again. The Commission is a statutory body. It has to go by what the Legislature said. In setting these rates, there is no discussion about public interest. Is there in the regulation regarding phase in, yes. There is a discussion, the phrase is in their public interest, but the Commission chose not to get into phase in. They didn't want to talk about it. They just said no, case dismissed. They willy-nilly are going around doing things without having some basis in law. And it is not necessary in every proceeding of the public utilities. They must look to the statutory law that the Legislature gave them.

I could continue and we could go back and forth forever on this, your Honor. I think you've understood the record. This is a point where the Commission had some concerns at the end, but they had no evidence to support rejection entirely.

And I'm very concerned on the remand, your Honor, if you decide to remand it what the scope of the hearing will be. We will argue interminably when we get back down before the Commission about what is the scope. So it's very important that you define, if you're going to remand, what the scope is. We're going to have to try to litigate, relitigate all this stuff again. We did it once. The remand ought to say you had a rate, it's between these two rates and that ought to be the limitation.

If they want to go out and change their rules, if they want to come down and investigate, they can do that. But this proceeding -- we have proceeded through a 1-26 judicial review. They don't get a second bite at the apple. Otherwise, this thing is going to go on interminably, and my client is entitled to get a fair rate. It hasn't got a fair rate. We've been asking since almost a year ago based on the most current cost study and we respectfully request, your Honor, if you remand it that you do so with instructions that it be confined to this

record, that it be a determination between these two rates, that they report back in 10 to 20 days with new findings and conclusions and if somebody disagrees with that they can appeal back here to this Court.

THE COURT: Well, but the status of the record is I'm reviewing a motion -- essentially a motion to dismiss. If I overrule that, aren't you back to where you were before where the record was reopened?

MR. WELK: I don't think the record needs to be reopened.

THE COURT: Well, I understand that. I know you don't want it reopened, but what I'm saying is the order that I'm considering today is the order granting AT&T's motion to disapprove and close the docket. If that's reversed, aren't you back to the position that you were before where the Commission had moved to reopen to hear additional evidence? Isn't that the stage it should go back to?

MR. WELK: You can say that, but what other additional record do you want? What is going to be defining. What is going to be at that hearing? Are we going to hear all the same argument? Are we going to go back through the same thing we did before.

The basis for these rules -- and I keep going back to that -- was this interminable process wouldn't exist and

all you're doing is further delaying the process. And none of these people care.

THE COURT: You can implement. Why don't you go back and implement 5.55?

MR. WELK: We can do that. We can go back and implement 5.5 if you say that's the rate we're entitled to.

THE COURT: Well, I'm not going to say that. I can tell you that.

MR. WELK: If you say the rate is between 5.5 and 6.14, then we got some degree of certainty where it's going to be. These decision you're making are affecting millions of customers and people and we take these decisions very seriously. And we take these -- this Court and the Commission's decisions very seriously. And we would rather deal with the Court's decision, but if you send us back in limbo, I'll tell you it will be another six to -- six months and we'll be back here again if it isn't defined because now on the other case that you sent back on Cheyenne River, we're doing the same thing. Motions were heard on the record, and it just sends us into interminable harassment unless you're clear on what you say should be done, what the evidence ought to be and then we argue about what your order is.

And that's what I don't think my client should have

to do having waited a year. I mean, the Commission has the authority to suspend the rate for 180 days. They took -- they are going to continue on that, and I don't think that's fair and what's anticipated. They should make the decision promptly. There isn't anything more than that they need to do and hear this evidence all over again.

THE COURT: This is like a big stakes poker game with this implementation statute. I mean, if you want to stick your neck out, you can do that.

MR. WELK: Yes, we can do that.

THE COURT: So I mean --

MR. WELK: I think the prudent thing -- if we want to play high stakes poker we can. We would prefer to work with the Court and the PUC. That's the type of corporation it is, but if we have -- we have the right to go ahead and do that. I would like to be able to tell my client the Court believes this. Otherwise, we're going to go back and argue about what the procedure rule means, what in the hearing we can continue on.

Now we're at a year, year and-a-half and my client continues to provide service to all these companies at an unreasonably low rate, which everybody in this room couldn't beat. You're forcing my client to continue to furnish that service at an unreasonable and confiscatory

rate. Sometime US West's consideration has to be made here. And we have waited, we have gone through the hearings, and everybody else is going to come up with some sort of reason why we have three more hearings and more evidence because it's in their interest to do so. And I just request, your Honor, that you be specific on a timetable that this matter get done and in fairness to my client, I think that's reasonable. I have nothing further.

THE COURT: Okay. Well, since -- because of the continuation of this case, I've had two opportunities to prepare. I'm going to give you a bench decision. The matter before the Court is an appeal by US West from a Commission decision including findings of fact and conclusions of law which granted AT&T's motion to

disapprove the rate increase and close the docket, which is essentially a motion to dismiss. The effect of that ruling was to deny US West any increase in its switched access rates. I think some historical recitation should be in the record on my part at this point. On June 24, 1956, US West filed for the approval to increase the rates. The Commission permitted intervention by numerous parties who have been -- who are all here and represented in court today. Maybe -- well, Dakota Cooperative may not be, are

1 they?

2 MR. WELK: They're not here, your Honor.

3 THE COURT: Yeah. With their exception -- and  
4 Express is not here.

5 MR. WELK: They withdrew, your Honor.

6 THE COURT: Okay. With those exceptions, the other  
7 parties have argued today.

8 Now, historically, it appears that under the statute  
9 12.4, the Commission suspended the proposed rate increase  
10 and scheduled a hearing for October 9 and 10. After that  
11 hearing and after the Commission heard the evidence, the  
12 Commission moved to reopen the record to take additional  
13 evidence. Thereafter, US West advised the Commission that  
14 it believed the existing administrative record supported  
15 its application and that it did not intend to offer  
16 additional evidence.

17 At approximately the same time, US West advised the  
18 Commission that because of -- that because the hearing on  
19 the Commission's motion to reopen would not take place  
20 until after the expiration of the statutory 180-day time  
21 period, US West was going to exercise its statutory right  
22 to unilaterally impose the proposed change. That right is  
23 set forth in 49-31-12.4(5).

24 The next thing that occurred is on January 16, 1997.  
25 before the scheduled rate -- or excuse me, before the

1 scheduled date of hearing to take the additional evidence,  
2 AT&T moved to disapprove the application and close the  
3 docket. After a further hearing, AT&T's motion was  
4 granted and the Commission entered Findings of Fact and  
5 Conclusions of Law, which are the subject of this appeal.

6 Now, this appeal, as I see it, involves the question  
7 of whether the Commission properly or improperly granted  
8 the motion to disapprove and close the docket or dismiss  
9 without determining a fair and reasonable rate based on  
10 the evidence in the record. The issue is whether or not  
11 there is substantial evidence in the record to support the  
12 Commission's ultimate decision that US West was not  
13 entitled to any increase because that's the effect of what  
14 occurred by granting the motion to dismiss.

15 At the outset, there's a dispute among the parties  
16 about the correct standard of review. One side argues  
17 that -- or the Intervenor's primarily argue that this is a  
18 question of fact or mixed question of fact governed by the  
19 clearly erroneous standard. US West argues that it's a  
20 mixed question of fact and law that is based -- or that's  
21 really a de novo review because the historical facts are  
22 undisputed and the Commission's determination was to  
23 determine the legal effect of the evidence.

24 This Court concludes that ultimately, the PDC  
25 decision to determine a fair and reasonable rate is a



1 factual determination, which is within the expertise and  
2 experience of the Commission, and consequently, is a  
3 factual review or matter which should be governed by the  
4 clearly erroneous standard.

5 Now, getting to the law that applies, SDCL 40-11-12.4  
6 governs the proceedings before the Commission.  
7 Subdivision 1 of that statute provides that the Commission  
8 may upon a petition enter into a hearing concerning the  
9 propriety or reasonableness of the proposed increase.

10 Subsection 3 provides that during that hearing the  
11 Commission may receive, "whatever evidence, statements, or  
12 arguments the parties may offer pertinent to the  
13 investigation." Although, the burden is clearly on the  
14 company to prove that the imposed rate is fair and  
15 reasonable.

16 Subsection 4 specifically provides that after the  
17 hearing, the Commission has a duty to, "determine a fair  
18 and reasonable rate, render a written decision  
19 specifically setting out the rate or price and prepare a  
20 record of its proceedings."

21 If a company exercises its statutory right to  
22 implement a rate, subsection 5 then provides that upon  
23 completion of the hearings and entry of a Commission  
24 decision, the Commission may require that the company  
25 refund with interest the portion of the "increased rates"

1 found to be fair -- excuse me -- unfair or unreasonable.

2 Now, in determining -- in making these  
3 determinations, the Commission has adopted a computer  
4 model to assist in determining what is a fair and  
5 reasonable rate. These rules dictate the methodology by  
6 which the rates are to be determined. US West's cost  
7 study utilized that model. It suggested a 6.6 cents per  
8 minute rate.

9 The PUC staff took issue with, as I read it,  
10 approximately nine of the inputs used by US West in that  
11 model. Nevertheless, the PUC's own staff made adjustments  
12 itself and determined and testified essentially that a  
13 fair and reasonable rate was the 6.15 rate. In addition,  
14 the evidence in the record reflects that the other people  
15 that have these -- or other companies in South Dakota that  
16 have these rates have established rates -- access rates it  
17 looks to me like ranging between 7.04 cents going all the  
18 way up the ladder to there's some -- a couple 8's, a 9 and  
19 even a 10 cent rate.

20 Now, the Intervenor's objected to US West's proposal  
21 and inputs. They did not submit quantifiable evidence  
22 concerning what a fair and reasonable rate was. Instead,  
23 the Intervenor's criticized various rates and inputs --  
24 various inputs, I should say, that were used by US West in  
25 the computer model. US West then came back in their

1 rebuttal case and although they didn't agree with those  
2 criticisms, they demonstrated that if the criticisms were  
3 valid -- and that is the criticisms of the inputs -- that  
4 the rate, even assuming those criticisms to be valid,  
5 would be 5.55 percent -- 5.55 cents, excuse me.

6 Now, at the hearing, US West agreed to the staff  
7 recommendation of 6.15. They did not agree to the 5.55 at  
8 the hearing, but they have agreed to that before the Court  
9 today and asked the Court to set the rate at 5.55.

10 In analyzing this case, the Court must take into  
11 consideration the fact that a majority of the Commission  
12 determined that they were uncomfortable essentially with  
13 two things. And because of that, they moved to reopen the  
14 record to take additional evidence. As I read the record,  
15 there were five concerns of the majority. Those concerns,  
16 however, really fall into two groups.

17 Essentially, the first group is that the Commission  
18 was uncomfortable with the reliability of the inputs used  
19 by US West in the computer model. The second group of  
20 concerns was that the majority of the Commission was  
21 concerned about the effect that the rate increase on small  
22 resellers might have. The Commission, however, never  
23 pursued either of those concerns because it granted AT&T's  
24 motion to disapprove the application and close the docket.

25 Now, as I've indicated before, that means the issue

1 before this Court is the propriety of granting that  
2 motion. The Commission has entered extensive findings and  
3 conclusions to support its decision, but I think when you  
4 look at it, it really comes down to two reasons in those  
5 findings why they granted the motion.

6 First, the Commission found that US West's proposed  
7 switched access rates were not in the public interest.  
8 That finding was made in Finding of Fact XXIII. The  
9 second reason is set forth in Findings XXIV, XXV, and  
10 XXVI. There, the Commission found that US West's inputs  
11 into the cost study were not adequately verified and as a  
12 result, the computer model -- let me try to -- could have  
13 produced an incorrect mathematical result.

14 In the process of doing that, they also found that US  
15 West's witness -- prime witness on this issue, Mr. Culp,  
16 was not credible. Ultimately, then the Commission found  
17 that US West had not met its burden of proof that a 6.15  
18 percent -- cent rate was fair and reasonable. However,  
19 the Commission did not determine a fair and reasonable  
20 rate or render a decision specifically setting out the  
21 rate. Rather, it simply granted the motion to dismiss  
22 before the implementation date of US West's proposal.

23 This Court, after considering the record and  
24 evidence, believes that the matter must be remanded for a  
25 number of reasons. First, the Commission's Findings of

1 Fact that US West's proposed access rates are not in the  
2 public interest is not supported by any Findings of Fact  
3 to indicate how that ultimate finding was made as is  
4 required by In Re SDDS. Now, the Commission and the  
5 Intervenors in their briefs point out various theories  
6 upon which a public interest finding could be sustained.  
7 However, under SDDS, this Court may not search the  
8 record and speculate whether these various theories are  
9 the ones which support that finding.

10 More specifically, there's been argument to the Court  
11 that the impact on the other resellers, the other  
12 purchasers, sustain a public interest finding. There's  
13 the arguments about rate shock and that is mentioned in  
14 the Commission decision. However, in the ultimate  
15 finding, they simply conclude -- or the Commission simply  
16 concludes that it's not in the best interests, but they  
17 don't indicate what the underlying findings are to support  
18 that finding -- that ultimate finding.

19 And as a consequence, if nothing else, the case has  
20 to be remanded for the Commission to indicate the findings  
21 that it believes makes no rate increase in the public  
22 interest. SDDS requires that the Commission must  
23 reflect the actual reasons for that ultimate finding. In  
24 the absence of the underlying findings, this Court is left  
25 to speculate if those are the sole reasons or if they are

1 the reasons for the Commission's ultimate finding. So on  
2 remand on that issue, the Commission must articulate the  
3 underlying factual reasons for its public interest  
4 finding.

5 Now, in doing so, this Court wants to note that I am  
6 not deciding today whether or not the public interest is a  
7 factor which the Commission may, as a matter of law,  
8 consider. Because the matter is being remanded, that  
9 issue may be further considered on further appeal once an  
10 adequate factual record is established so this Court can  
11 adequately review it.

12 The matter must also be remanded because of the way  
13 the Commission disposed of the arguments concerning the  
14 accuracy and reliability of US West's inputs. At the  
15 outset, it should be noted that there's no issue that US  
16 West complied with all accounting standards and  
17 administrative rules for completion of the cost study that  
18 were in existence at the time of the hearing. Although  
19 the Intervenor and Commission members were concerned  
20 about the accuracy and reliability of the inputs, the  
21 unrefuted rebuttal testimony reflected that if all those  
22 criticisms were considered, US West was still entitled to  
23 a 5.55 cent rate.

24 More importantly, although two of the commissioners  
25 had concerns about the reliability and accuracy of the

1 inputs, the Commission did not find that any of the nine  
2 inputs at issue -- I should say any of the specific inputs  
3 at issue were unreliable. And very significantly, the  
4 Commission did not find that the -- any of the inputs --  
5 and I should say the corrected inputs or adjusted inputs  
6 used by its own staff analysts were flawed, were  
7 inaccurate or were unreliable.

8 It's true that they did express concern about some of  
9 the underlying data not being under oath, but there's no  
10 finding rejecting the testimony of Knadle, Best, or  
11 Rislov's analysis. And I think it's important to indicate  
12 here what that testimony is. The Court has read the  
13 proceedings before the Commission and I note that -- I  
14 hope I'm pronouncing this right, is it Knadle?

15 MR. HOSECK: Yes.

16 THE COURT: Mr. Knadle, a utility analyst for the  
17 Commission staff, testified about the appropriate rate.  
18 There were three of them that did. They did this as a  
19 joint project and all agreed that this 6.15 was an  
20 appropriate rate.

21 Now, more specifically, Knadle testified as to some  
22 of the inputs. I forget, but one of them had four and one  
23 of them had five and then one of them kind of summarized  
24 it. But Knadle was specifically asked whether he had  
25 considered the cross-examination of Culp and the testimony

1 of Parker, which was the witness who criticized US West's  
2 inputs, and he did not change his pre-filed testimony in  
3 spite of AT&T's cross-examination of Culp and the  
4 testimony of Parker.

5 It's also significant to note that he considered not  
6 only the cost study provided by US West, but other  
7 information that he felt necessary to feel comfortable  
8 with a fair and reasonable rate that he obtained from US  
9 West. The bottom line is that he did not testify that the  
10 underlying information was inadequate.

11 So also, Harlan Best, another analyst with the staff,  
12 testified as to five of the other -- five other  
13 considerations that -- or adjustments that the Commission  
14 staff was concerned about. In his testimony before the  
15 Commission he adopted his pre-filed testimony, which  
16 essentially indicated that the cost study as adjusted  
17 complied with the Commission rules and at 6.15 cents was  
18 appropriate. Although there's an argument about whether  
19 the underlying information was under oath and whether it's  
20 secondary information or whatever, he testified that he  
21 relied on the ARMIS report, that he used the monthly  
22 reports that US West is required to file, and that even  
23 though he considered Culp and Parker's testimony, that did  
24 not change his recommendation.

25 Finally, Greg Rislov, another analyst with the



1 Commission, testified as to four other adjustments and  
2 issues that were in dispute. And despite the Parker  
3 testimony, which he had read, he adopted his pre-filed  
4 testimony and -- which essentially in consultation with  
5 the other two, recommended a 6.15 cent rate.

6 So what you have here is a record wherein these --  
7 this evidence presented by these three analysts is not  
8 rejected by the Commission. Nevertheless, US West -- or  
9 excuse me, the Commission today argues to this Court in  
10 its briefs that there is an evidentiary shadow on the cost  
11 study because of the cross-examination of Culp and the  
12 other criticisms of the inputs raised by AT&T.

13 However, I think it's extremely significant that the  
14 Commission essentially admits in its brief or concedes  
15 that, "Depending on what cost study or whose analysis  
16 it -- meaning the PUC -- would believe, the switched  
17 access rate ranged from 6.4 cents per minute to 5.55 cents  
18 per minute." That's PUC Brief at pages 10 through 11.

19 This admission clearly demonstrates to this Court  
20 that there is the existence of a range of substantial  
21 evidence justifying some increase. The Commission,  
22 however, in granting what's equivalent to a motion to  
23 dismiss, in my opinion, failed to follow its statutory  
24 duty to "determine a fair and reasonable rate or price,  
25 render a written decision specifically setting out the

1 rate and prepare a record of its proceedings."

2 This Court acknowledges that the motion was granted  
3 because US West indicated that it would not present any  
4 additional evidence to support its application in the  
5 hearings. However, that application -- or that action of  
6 US West did not relieve the Commission of its  
7 responsibility to determine a fair and reasonable rate.  
8 That duty arises not only from section 12.4, but also from  
9 the general powers and duties of the Commission under  
10 section 7.1.

11 Under that statute, the Commission is given explicit  
12 power to obtain from US West "full and complete  
13 information necessary to enable it to form the duties and  
14 carry out the objects for which the Commission was  
15 created." The Commission also has explicit authority to  
16 require reports which, in the opinion of the Commission,  
17 it finds necessary or proper for its information. The  
18 Commission may prescribe the forms of any and all  
19 accounts, records, and memoranda to be kept by US West.  
20 And they specifically may inspect all accounts, records  
21 and memoranda kept by US West.

22 Moreover, the Commission may employ special agents or  
23 examiners to examine any and all accounts, records and  
24 memoranda used by US West including the right to examine  
25 books, papers, documents and employees of the company.


1 Finally, the Commission is given specific subpoena power  
2 to compel the attendance and testimony of witnesses and  
3 the production of books, papers, tariffs and documents  
4 relating to any matter under investigation.

5 It's evident on reading this record that the  
6 Commission staff requested the information it deemed  
7 necessary to determine a fair and appropriate rate. The  
8 Commission, however, did not. Rather, it simply dismissed  
9 the docket -- or the application. It did so because the  
10 Commission's findings reveal, at least in my opinion, a  
11 potential problem with the inputs used by US West and its  
12 own staff witnesses.

13 Again, however, the Commission did not find that its  
14 own staff's witnesses were unreliable, unbelievable or not  
15 credible. And in the absence of such a finding, the only  
16 "substantial evidence" on this record supports some kind  
17 of an increase, using the Commission's own words to this  
18 Court, "Depending on what cost study or whose analysis the  
19 PUC would believe, the switched access rate ranged from  
20 6.4 cents per minute to 5.55 cents per minute."

21 This shows to this Court that there is substantial  
22 evidence to support some rate increase. However, I've  
23 repeatedly asked today what evidence there is to -- what  
24 substantial evidence there is to purport -- to support no  
25 increase and no one has been able to identify any such

1 evidence to this Court. Now, the Commission and  
2 Intervenor further argue that further hearings were  
3 useless because US West did not intend to introduce  
4 further evidence. Again, I believe this overlooks the  
5 Commission's statutory duties and responsibilities. Under  
6 those duties and responsibilities, the Commission  
7 certainly had the authority to reopen this record as it  
8 did to satisfy itself on the five concerns expressed at  
9 the December 9 meeting.

10 My decision is not intended to imply that the  
11 Commission, if not satisfied with numbers, cannot inquire  
12 into those matters. They clearly have that power.   
13 However, the five concerns that were -- that are in this  
14 record are number one, whether the depreciation was  
15 inadequately explained and unresolved; number two, whether  
16 there was a lack of quantification by small resellers of  
17 the effect of the proposed rate increase on their  
18 membership; number three, whether small resellers had  
19 presented sufficient alternatives to the cost model  
20 results; number four, what the effect of the size of the  
21 rate increase on small resellers would be; and five, a  
22 concern over the lack of verification of numbers which  
23 went into the cost model.

24 I think, however, -- at least in my opinion, however,  
25 it's -- it was not useless to proceed for two reasons.

1 First, as I previously indicated, in the absence of a  
2 finding by the Commission that its own staff witnesses are  
3 not credible, are unreliable and that their testimony is  
4 totally rejected, I don't believe US West was obligated to  
5 provide additional evidence on concerns one and five. At  
6 that point, the record, in the absence of a finding or a  
7 rejection of their testimony, there was evidence in the  
8 record as the Commission's brief to this Court concedes,  
9 because there was a range of evidence before the  
10 Commission.

11 If the Commission is uncomfortable with the inputs on  
12 concerns one and five, as I've previously indicated, it  
13 has more than adequate authority to obtain that  
14 information from US West. If the Commission on remand  
15 believes that US West's numbers really need what's been  
16 described as scrubbing, the Commission has the authority  
17 to accomplish that task. And as I've already indicated  
18 two or three times, in the absence of a finding that the  
19 PUC staff testimony is rejected, the Commission has a duty  
20 then under 12.4 to determine the appropriate rate that's  
21 based on the evidence in the record.

22 The second error on this issue of reopening the  
23 record because of these concerns is that the other concern  
24 on factors two, three and four really weren't US West's  
25 obligation to satisfy. Under those concerns, those were

1 concerns about the resellers' failure to present evidence.  
2 And there may be rate shock and public interest matters to  
3 be considered here, but under the Commission's own order  
4 to reopen -- or the motion to reopen, the Commission's  
5 dismissal of the docket was not warranted by the failure  
6 to produce evidence on factors two, three and four. That  
7 wasn't US West's obligation. That was the obligation of  
8 the others. Findings of Fact -- or Finding of Fact XXVIII  
9 clearly reveals that these issues involved evidence which  
10 only the Intervenors could produce and US West simply need  
11 not be faulted or penalized for failure to produce  
12 evidence on those issues.

13 So for all these reasons, I'm going to conclude that  
14 the granting of AT&T's motion of disapproval was in err.  
15 As I view it, that leaves this matter before the  
16 Commission with an open docket and a motion to hear  
17 additional evidence on the five factors that are present.

18 It will be the order of the Court that the matter be  
19 remanded to the Commission for further proceedings not  
20 inconsistent with this opinion. The matter is remanded  
21 with the express opportunity of the Commission to conduct  
22 its investigation as it deems appropriate under its motion  
23 to reopen the record and -- but ultimately, the matter is  
24 remanded to the Commission to carry out its statutory duty  
25 to "determine a fair and reasonable rate, render a written

decision specifically setting out the rate, and prepare a record of its proceedings."

Mr. Welk, you should prepare an order of remand consistent with this -- maybe it would just be easier to incorporate this decision.

MR. WELK: May I ask some questions, your Honor, about what your remand order means because we're just going to be back arguing this again.

THE COURT: Well, what I've tried to say is, as I view it, the issue before the Court today is whether or not the motion to dismiss -- the motion to disapprove and close the docket was inappropriate. I think it was. The Findings of Fact and Conclusions of Law don't support it for the reasons I've indicated. And I think if the Commission -- I think if the Commission is genuinely concerned about the numbers and it wants to scrub numbers, it's got the power to do that and it should do that because that's its duty and obligation under the statute. And I also think that if you want to implement your rate you can implement your rate. It seems to me that's where we're back to when the -- when the motion to disapprove is overruled.

MR. WELK: Well, my questions, your Honor, go to does this give the Commission the opportunity to go over all of the evidence that has been presented or is it that the

1 hearing that may be held limited in scope to what the  
2 concerns were at the time that the motion to reopen, which  
3 you've already gone through and talked about? What is the  
4 scope of the remand hearing going to be, and what are we  
5 going to do at the hearing to implement your order?

6 THE COURT: Mr. Welk, I can't give you an answer to  
7 that. I think this is an -- the Commission is empowered  
8 to make these decisions. They made -- they moved to  
9 reopen the record. I think if they're uncomfortable with  
10 the numbers, they've got that right. And I understand  
11 your concern, but I don't think I -- I don't think it's a  
12 judicial function to tell the Commission on remand how to  
13 conduct its business.

14 MR. WELK: Can we at least, your Honor, have the  
15 order for remand dictate when this matter ought to be  
16 concluded in light of the fact that this matter has been  
17 over one year since the application has been filed.

18 MR. HOSECK: May I speak to that, your Honor?

19 THE COURT: Yes, Mr. Hoseck.

20 MR. HOSECK: In doing that, and if the Court does  
21 that, the thing that I would ask is that if the Commission  
22 on remand goes for a scrubbing of these numbers, this may  
23 be a time consuming process.

24 Now, I don't think that anybody can say that this has  
25 been unduly delayed in those processes, but I think that



1 there's a practical consideration here that if the  
2 Commission orders an audit or some sort of verification,  
3 whether by its own staff or whether it requests this  
4 information of US West, that this is going to take some  
5 time. That's the only point I'd like to make.

6 THE COURT: Well, I don't -- I understand your  
7 concern, Mr. Welk, but I don't believe that I have  
8 authority to tell the Commission to act within a certain  
9 number of days. I mean, I would obviously encourage them  
10 to act as reasonably quickly as they can. I don't know  
11 what they're going to do. And as I've indicated, I think  
12 they've got the right to further investigate this.

13 The other side of the coin is, you know, US West,  
14 everybody in this room, I think are big -- well, maybe not  
15 big companies, but you've got the right to implement the  
16 rate and at least, you know, that's -- maybe that's an  
17 advisory opinion, maybe that's subject to argument, I  
18 don't know. And if it is, I don't mean to express an  
19 opinion today that that is the law, but in just reading  
20 the statute it seems like that's what everyone here today  
21 kind of agreed. But you've got the right to implement the  
22 rate, but they should act, I mean, forthwith. That --

23 MR. WELK: I would just like some direction, your  
24 Honor, in light of what has happened here because we're  
25 going to get into the issues, I'm telling you right now.

1 we already started doing this in the last hearing about  
2 who's going to pay for this. The staff is satisfied. You  
3 know, apparently they were at the hearing. So whatever  
4 the Commission wants to order, whose going to pay for it.  
5 The rest of these people, we're going to go back and we're  
6 going to discuss. But I at least want some direction that  
7 the Court has said act, you know, forthwith to get this  
8 matter done. I think I'm entitled to that for my client.

9 THE COURT: Forthwith. How's forthwith?

10 Anything else?

11 Okay. We'll be in recess.

12 MR. RITER: Thank you, your Honor.

13 MR. HOSECK: Thank you.

14 (Conclusion of Hearing.)  
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1 STATE OF SOUTH DAKOTA)


) SS

CERTIFICATE

2 COUNTY OF HUGHES )

3  
4  
5 I, Connie Heckenlaible, Official Court Reporter and  
6 Registered Professional Reporter in and for the State of  
7 South Dakota, do hereby certify that the Transcript of Oral  
8 Argument contained on the foregoing pages 1 through 90,  
9 inclusive, were reduced to stenographic writing and  
10 thereafter transcribed; that said proceedings commenced on  
11 May 16, 1997, in the Courtroom of the Hughes County  
12 Courthouse, Pierre, South Dakota, and that the foregoing is a  
13 full, true and complete transcript of my shorthand notes of  
14 the proceedings had at the time and place above set forth.

15 Dated this 2nd day of June, 1997.

16  
17  
18   
19 Connie Heckenlaible, RPR  
20 Official Court Reporter  
21  
22  
23  
24  
25

Corrected 9/19/97

all Form 1000, 1000 and 1000

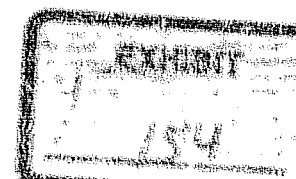
1. a. Identify the most recent switched access cost studies presented to the Public Utilities Commission by local exchange carrier including SDN and LECA by filing date and social number
- b. Provide the switched access revenue requirement, access minutes of use and access cost per minute of use filed by each exchange carrier identified in (a) above.
- c. Identify and provide a list of any PUC Staff adjustments made to the cost studies identified in (a) above.

	a.	a	b	b	b	b	b	b	b	b	b	b
	filing date	docket number	switched access revenue requirement	access minutes of use	access cost per minute of use							
			CCL	LS	LT	CCL	LS	LT	CCL	LS	LT	
SDN	6/2/97	TC97-060	80	\$835,625	\$584,338	1	94,891,819	67,117,504	\$0.0000	\$0.0088	\$0.0088	
LECA	6/2/97	TC97-061	5,406,406	4,194,814	5,523,682	180,878,988	180,901,972	180,981,972	0.025690	0.023181	0.030525	// equal O & T
Bell	5/30/96	TC95-049	69,149	85,188	36,507	2,468,175	2,468,175	2,468,175	0.028016	0.034514	0.014791	
Berksford	7/10/96	TC96-124	51,179	711	2,391	2,244,736	2,244,736	2,244,736	0.022900	0.000317	0.001088	
Brookings	6/24/96	TC96-106	confidential	confidential	confidential	confidential	confidential	confidential	confidential	confidential	confidential	
CRSTA	6/27/96	TC96-113	312,558	118,328	218,738	4,558,292	4,558,292	4,558,292	0.068568	0.025958	0.047986	
Golden West Coop.	6/27/95	TC95-060	1,359,438	930,210	1,481,678	29,580,578	29,580,578	29,580,578	0.046088	0.031428	0.050123	
Golden West Comm	7/28/96	TC96-121	611,203	287,814	331,999	20,648,227	20,657,778	20,657,778	0.026604	0.012684	0.018071	
ITC	6/17/96	TC96-097	279,379	350,638	328,978	17,499,165	17,499,165	17,499,165	0.015965	0.020037	0.018800	
James Valley	6/28/96	TC96-115	103,704	113,278	165,870	5,738,382	5,738,382	5,738,382	0.018072	0.019740	0.028871	
Kennebec	6/25/96	TC96-109	62,956	1,658	31,272	1,021,053	1,021,555	1,021,555	0.062206	0.001621	0.030812	
McCook	6/4/97	TC97-065	51,957	85,827	293,299	2,685,977	2,685,977	2,685,977	0.018344	0.035877	0.110313	
Midstate	6/4/97	TC97-064	219,090	268,051	532,191	8,303,485	8,303,485	8,303,485	0.028388	0.032266	0.064093	
Roberts	6/28/96	TC96-118	50,713	40,854	13,370	363,334	363,334	363,334	0.139577	0.112442	0.036798	
Sandborn	6/25/96	TC96-108	188,097	151,499	236,702	7,074,680	7,089,497	7,089,497	0.026587	0.021369	0.033389	
Sioux Valley	6/28/96	TC96-116	391,425	230,517	212,189	16,416,719	16,427,587	16,427,587	0.023234	0.014032	0.012815	
Spitrock	6/18/96	TC96-096	165,849	121,584	70,832	4,838,601	4,838,589	4,838,589	0.038022	0.025119	0.014574	
Stockholm	6/28/96	TC96-117	23,435	51,813	939	447,368	447,368	447,368	0.052382	0.115385	0.002069	
Sully Buttes	6/13/96	TC96-084	383,347	438,209	684,656	12,617,610	12,617,384	12,617,384	0.031264	0.034731	0.052870	
Tri-County	6/28/96	TC96-114	17,045	37,013	57,152	1,095,441	1,095,441	1,095,441	0.015560	0.033758	0.052173	
Union	5/28/96	TC96-111	101,185	83,854	14,720	2,521,625	2,522,144	2,522,144	0.040112	0.033168	0.005839	
Valley	6/4/97	TC97-063	129,644	120,434	287,197	4,581,587	4,581,587	4,581,587	0.028207	0.026207	0.002685	
West River (Bison)	5/30/97	TC97-059	184,961	25,881	169,405	3,247,693	3,247,693	3,247,693	0.058948	0.004002	0.052158	
West River (Hazen)	6/30/97	TC97-110	92,385	19,097	27,100	1,035,583	1,035,583	1,035,583	0.009220	0.018310	0.028189	
Western	6/26/96	TC96-110	83,452	595	42,288	2,038,534	2,038,534	2,038,534	0.048843	0.000292	0.020735	
OCI	6/21/96	TC96-104	368,209	461,128	468,045	13,854,809	13,853,256	13,853,256	0.026578	0.033282	0.033762	
East Rushmore	3/26/93	TC93-034										
Kelso	5/18/97	TC97-058										

- Berksford TC96-124 Based on staff study worksheet. Sheet G Lines 17, 18 and 38 were corrected
- Brookings TC96-108 Based on staff data request. Company revised cost study correcting working loops and allocation of customer services charges
- CRSTA TC96-113 Sheet G Lines 12 and 42 were corrected based on worksheet. Loop total was also corrected
- Golden West Comm TC96-121 Company was requested to file its third year requirements with us
- ITC TC96-097 Company had using an old program. minor revenue requirement changes resulted from using the most current program
- Kennebec TC96-109 Corrected Sheet G Lines 38 and 46 to agree with worksheet
- Midstate TC96-094 Adjusted revenue requirements were added to worksheet in the original filing. To be consistent with sheet G totals, it was added to worksheet
- Union TC96-111 Company requested the cost study to include the additional requirements from changes (previous filing was prior to year-end changes)

Golden West Cooperative was filed in 1995 and was the responsibility of Charles Galt. From the information as shown, no adjustment was made

James Valley TC96-115 Sheet G Line 12 and 42 were corrected based on worksheet. Loop total was also corrected



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4 16 8  
TC 96-032

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE INVESTIGATION OF  
SWITCHED ACCESS RULES**

**ORDER OPENING DOCKET**

**TC96-032**

At its regularly scheduled January 21, 1996, meeting, the Public Utilities Commission (Commission) opened a docket to inquire into the switched access rules found at ARSD Chapters 20:10:27 to 20:10:29, inclusive. To facilitate the investigation of this issue, the Commission is requesting that all interested persons and entities answer the following questions:

1. Do any of the above referenced switched access rules need to be modified?
2. If yes, which rules and what changes should be made? Submit all proposed rule changes with insertions into existing rules indicated by underscores, and deletions from existing rules indicated by overstrikes.
3. How do these changes enhance the telecommunications industry?
4. Should there be any modifications to the Commission's cost study program? If so, what?

To be considered, all comments are to be received no later than the close of business on April 22, 1996. The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-31. It is therefore

**ORDERED** that a docket be opened to inquire into the possible modification of the switched access rules found at ARSD Chapters 20:10:27 to 20:10:29, inclusive.

Dated at Pierre, South Dakota, this 23rd day of February, 1996.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by personal or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
Signed <u>Alvin H. H. H.</u>
Date <u>2/26/96</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

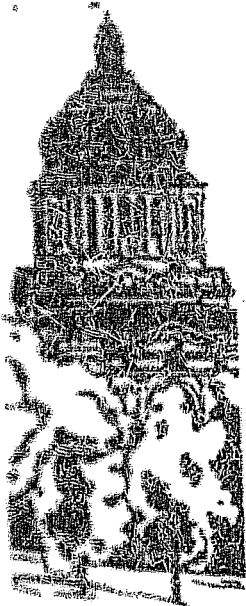
Kenneth Stofferahn  
KENNETH STOFFERAHN, Chairman

James A. Burg  
JAMES A. BURG, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

EXHIBIT

10029



# South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

March 15, 1996

MARY LOHNES  
PRODUCT MANAGER  
MIDCO COMMUNICATIONS  
410 SOUTH PHILLIPS  
SIOUX FALLS SD 57104

Dear Sir or Madam:

Administrative Rule 20:10:24:04 requires that your company file the following information by May 1, 1996:

1. A report of revenues resulting from operations in this state, a current financial statement, and a statement of any changes in the financial position of the telecommunications company relating to operations of the company in South Dakota. The report and statements shall be verified by a corporate officer and shall identify the location where any working papers supporting the report and statements can be reviewed;
2. A report identifying the exchanges, routes, or other geographic areas of this state where the company is providing or expects to provide services. The report shall include the number and types of customers being served, if the company keeps such records.

In SDPUC Docket No. F-3663, issued on May 5, 1988, the Commission required long distance providers and operator service providers to file their percent interstate usage (PIU) with the SDPUC. This is a reminder that PIU is to be reported along with the above administrative rule requirements. Material used to determine the PIU should be retained for possible auditing by the Commission.

In addition to the above information, the Commission in accordance with SDCL 49-31-7.1(4) requests the following information:

1. For each service offered, describe the access arrangements your company uses to originate and/or terminate traffic generated by that service;
2. For any service utilizing switched access for originating or terminating traffic, indicate which Feature Group is used;
3. Provide intrastate originating and terminating minutes of use, companies that are able to provide detail on intraLATA and interLATA minutes of use should do so. This information is to be broken down by Feature Group.

Feature Group	IntraLATA Minutes of Use	InterLATA Minutes of Use	Percent IntraLATA
A			
B			
C			
D			

You will also be receiving a letter and form from Sue Cichos, for reporting and paying your South Dakota Intrastate Gross Receipts Tax (minimum of \$250) for 1995 sometime in May. This tax is due and payable on June 1, 1996.

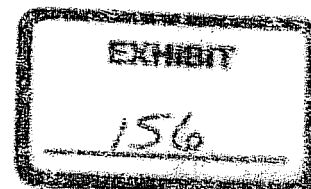
If you should have any questions concerning the above, please contact me.

Sincerely,

*Harlan Best*

HARLAN BEST, Deputy Director  
Fixed Utilities Division

10022



Capital Office  
Telephone (605) 773-3281  
FAX (605) 773-3289

Transportation/  
Weather Division  
Telephone (605) 773-5286  
FAX (605) 773-3225

Consumer Hotline  
1-800-532-1712

TTY Through  
Relay South Dakota  
1-800-877-1113

Internet  
web@puc.state.sd.us

Ken Skoffert  
Chairman  
Jim Berg  
Vice Chairman  
Linda Schoenfelder  
Commissioner

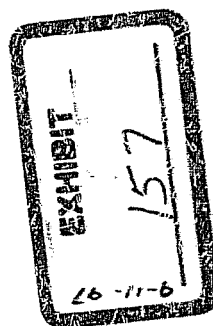
William Bullard Jr.  
Executive Director

Edward R. Anderson  
Marty Bent  
Marion C. Bertram  
Charles Belle  
Sue Cichos  
Karen E. Croner  
Marlene Fischbach  
Stephen Fugitt  
Richard Gallego  
Lewis Hammond  
Teresa Hendrix  
Lynn Hook  
Charmen Horack  
Dave Jacobson  
Bob Kastle  
Dwayne Kolbe  
Iris A. Koonchne  
Terry A. Lemminger  
Terry Norton  
Gregory A. Rindov  
Simon M. Wegman  
Kathleen Aulis Wiest

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SECRET

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(Large Exhibit)



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# Consolidated Financial Effects of US West South Dakota Intrastate Switched Access Rate Increase on TAG Member Companies

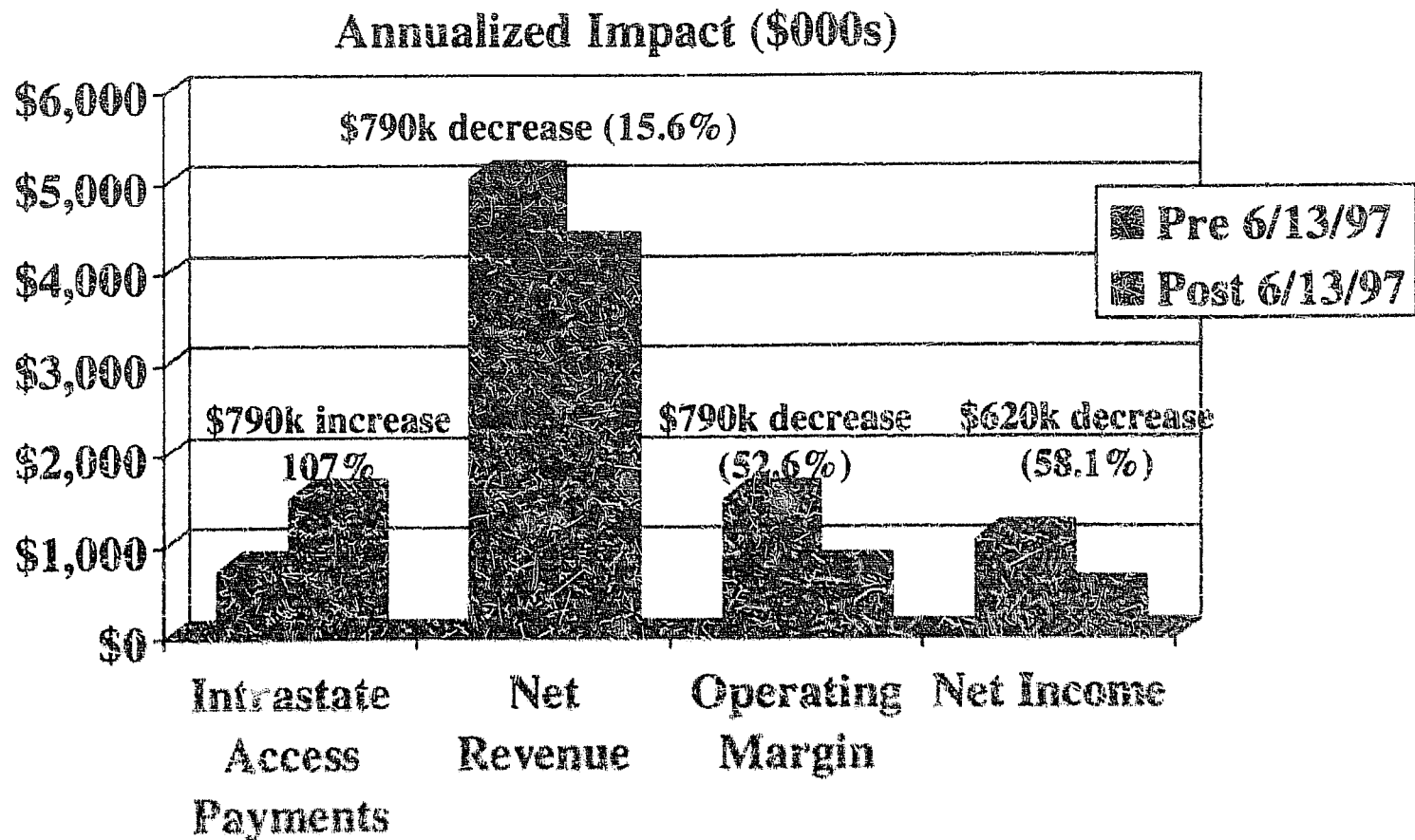


EXHIBIT  
158

Sources: US West South Dakota Annual Intrastate Switched Access Filing Impact Studies.  
TAG Member Company Financial Statements.

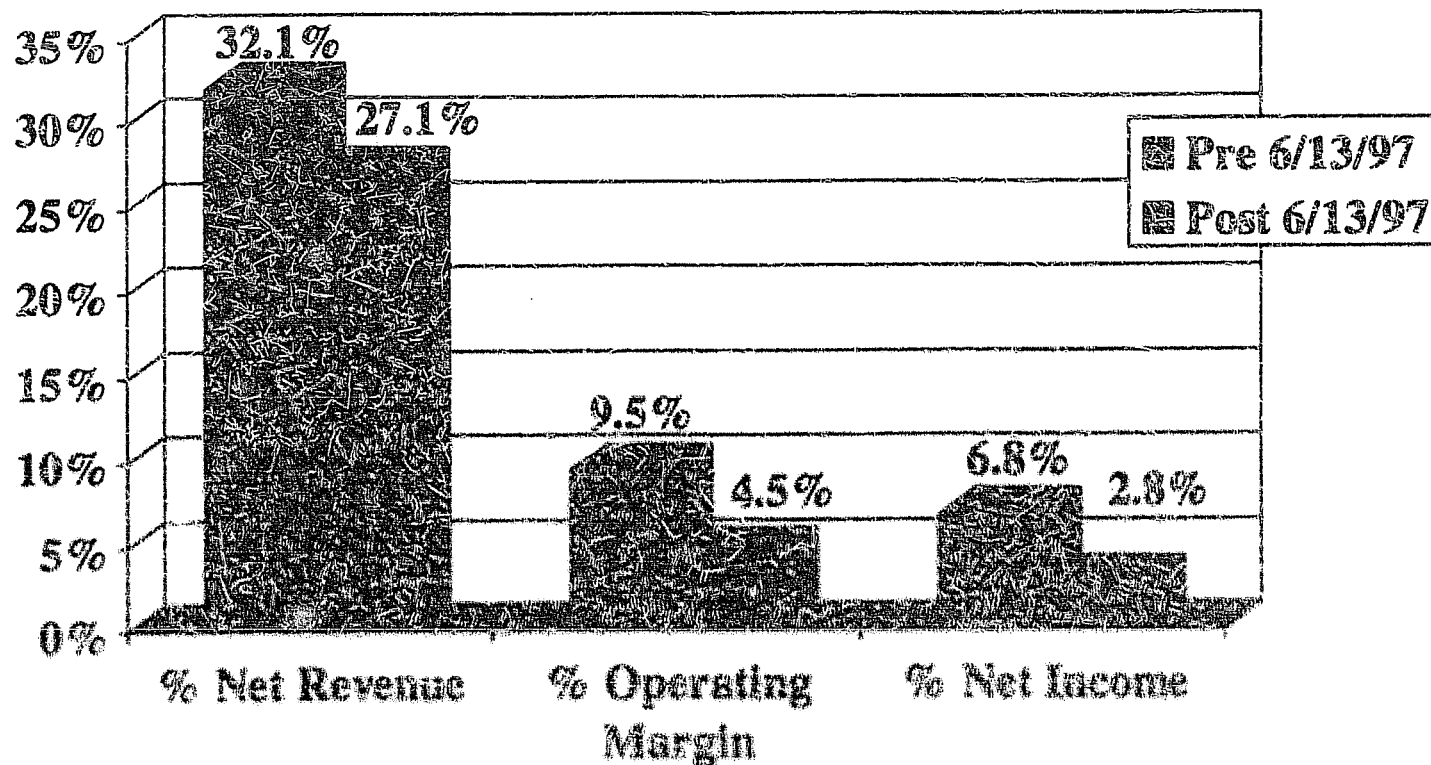
TAG  
p. 1

10024



# Consolidated Financial Effects of US West South Dakota Intrastate Switched Access Rate Increase on TAG Member Companies

## Key Financial Performance Indicators



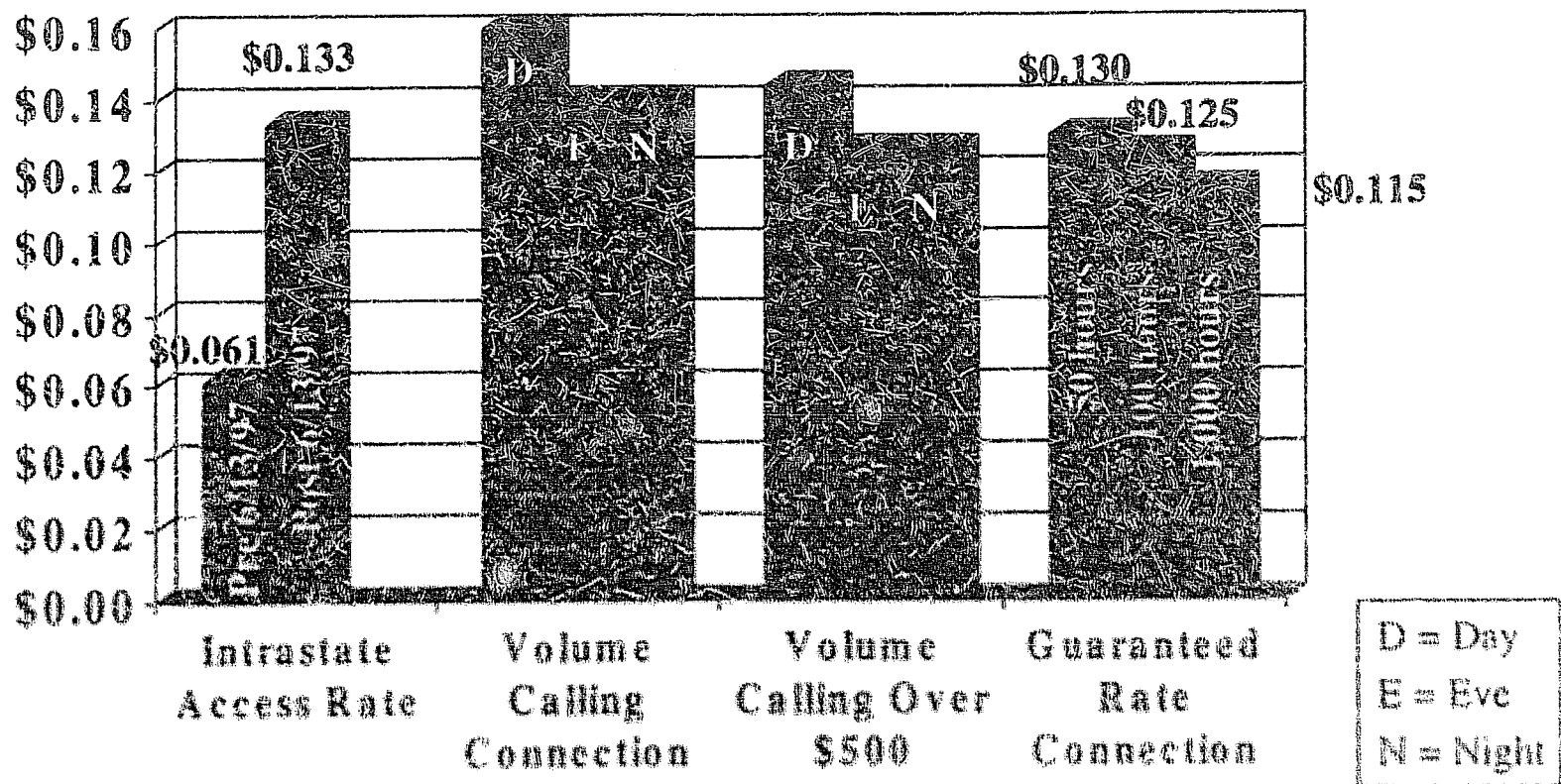
Sources: US West South Dakota Annual Intrastate Switched Access Filing Impact Studies.  
TAG Member Company Financial Statements.

## Per Minute Price of End-to-End Intrastate Switched Access for US West South Dakota

Service	Pre 6/13/97	Post 6/13/97	
Orig CCL Premium	0.006692	0.040575	Origination
Local Switching Premium	0.008357	0.010371	
Interconnect Premium	0.005230	0.005609	
Tandem Switching Charge	0.007700	0.007700	
Tandem Transport Fix 50+ Miles	0.000311	0.000311	
Tandem Transport Var 50+ Miles	0.000020	0.000020	Origination
Tandem Transport Fix 50+ Miles	0.000311	0.000311	Termination
Tandem Transport Var 50+ Miles	0.000020	0.000020	
Tandem Switching Charge	0.007700	0.007700	
Interconnect Premium	0.005230	0.005609	
Local Switching Premium	0.008357	0.010371	
Term CCL Premium	0.006692	0.040575	Termination
<b>Total CPM @ 100 Miles</b>	<b>0.060580</b>	<b>0.133132</b>	

Source: US West South Dakota Intrastate Switched Access Tariff, Sections 3 and 6.

# US West South Dakota Intrastate Switched Access Rates Compared to US West South Dakota Discounted Retail IntraLATA Toll (MTS) Rates



Source: US West Communications, Inc. State of South Dakota Exchange and Network Services Catalog, Section 6.3.

1. 在“  ”处填上适当的词语，使句子完整。

TRANSITIONAL SWITCHED ACCESS  
INTRASTATE

TRANSITIONAL SWITCHED ACCESS  
INTRASTATE

RATE ELEMENT	ARIZ #	EFF. DATE	COLO #	EFF. DATE	ID SW #	EFF. DATE	ID SW #	EFF. DATE	IOWA #	EFF. DATE	MINN #	EFF. DATE	MONT #	EFF. DATE	NEBR #	EFF. DATE
LOCAL SWITCHING	0.003381	07/01/87	0.003381	07/01/87	0.003381	07/01/87	0.003381	07/01/87	0.003381	07/01/87	0.003381	07/01/87	0.003381	07/01/87	0.003381	07/01/87
LOCAL SWITCH CCL																
A UNBUNDLED SIO	0.003380	07/01/87	0.003380	07/01/87	0.003380	07/01/87	0.003380	07/01/87	0.003380	07/01/87	0.003380	07/01/87	0.003380	07/01/87	0.003380	07/01/87
CCL-ORG #	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87
CCL-TERM #	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87

TRANSITIONAL SWITCHED ACCESS  
INTRASTATE

RATE ELEMENT	ARIZ	EFF. DATE	COLO	EFF. DATE	ID (W)	EFF. DATE	ID (P)	EFF. DATE	IOWA	EFF. DATE	MINN	EFF. DATE	MONT	EFF. DATE	NEBR	EFF. DATE
TRANSPORT-COMBINED (FAC. & TERM.)																
0 TO 1	(There	2/25/86	(There	10/1/81							Over LTR	7/15/80	(There	1/1/83	(There	7/31/83
OVER 1 TO 5	are no	2/25/86	are no	10/1/81							anywhere	7/15/80	are no	1/1/83	are no	7/31/83
OVER 5 TO 15	longer	2/25/86	longer	10/1/81							any	7/15/80	longer	1/1/83	longer	7/31/83
OVER 15 TO 25	any	2/25/86	any	10/1/81							page with	7/15/80	any	1/1/83	any	7/31/83
OVER 25 TO 50	intra-	2/25/86	intra-	10/1/81							new here	7/15/80	intra-	1/1/83	intra-	7/31/83
OVER 50 TO 100	state	2/25/86	state	10/1/81							state	7/15/80	state	1/1/83	state	7/31/83
OVER 100	Trans-	2/25/86	Trans-	10/1/81							rates for	7/15/80	Trans-	1/1/83	Trans-	7/31/83
	itional	2/25/86	itional	10/1/81							transmission	7/15/80	itional	1/1/83	itional	7/31/83
LOCAL SWITCHING	rates for	2/25/86	rates for	10/1/81							0.00070	10/1/81	rates for	1/1/83	rates for	7/31/83
	the state	2/25/86	the state	10/1/81									the state	1/1/83	the state	7/31/83
	of AZ.	2/25/86	of CO	10/1/81									of MT.	1/1/83	of NE	7/31/83
CCL-ORG	They are	2/25/86	They are	10/1/81							0.007376	2/27/80	They are	1/1/83	They are	7/31/83
CCL-TERM	all	2/25/86	all	10/1/81							0.016817	2/27/80	all	1/1/83	all	7/31/83
** EANTVEARIC	Premium J	2/25/86	Premium J	10/1/81							0.00381	3/14/87	Premium J	1/1/83	Premium J	7/31/83
*** USFOCAF														1/1/83		7/31/83

\*\* FOOTNOTE - THE INTRASTATE EARC RATE IS A MONTHLY CHARGE FOR E.A. LSC IN WESTERN REG. AND A MONTHLY CHARGE PER MCM IN EASTERN REGION.

\*\*\* FOOTNOTE - THE INTRASTATE USFOCAF RATE IN ARIZONA IS ADDED TO ORIGINATING CCL. IN OREGON, IT IS ADDED TO TERMINATING CCL. IN WASHINGTON, IT IS ADDED TO BOTH.

# Denotes Change

TRANSITIONAL SWITCHED ACCESS  
INTRASTATE

RATE ELEMENTS  
JULY 1987

TRANSMISSION RATE  
ELEMENTS FOR

RATE ELEMENT	STATE #	EFF. DATE	STATE #	EFF. DATE	STATE #	EFF. DATE	STATE #	EFF. DATE	STATE #	EFF. DATE	STATE #	EFF. DATE	STATE #	EFF. DATE
LOCAL SWITCHING	0.000001	07/01/87	0.000001	07/01/87	0.000001	07/01/87	0.000001	07/01/87	0.000001	07/01/87	0.000001	07/01/87	0.000001	07/01/87
LOCAL SWITCHING CCL	0.000000	07/01/87	0.000000	07/01/87	0.000000	07/01/87	0.000000	07/01/87	0.000000	07/01/87	0.000000	07/01/87	0.000000	07/01/87
CCL-ORIG	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87
CCL-TERM	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87	0.001771	07/12/87

TRANSITIONAL SWITCHED ACCESS  
INTRASTATE

RATE ELEMENT	NMEX	EFF. DATE	NOAK	EFF. DATE	ORIG	EFF. DATE	SOAK	EFF. DATE	UTAH	EFF. DATE	WASH	EFF. DATE	WYOM	EFF. DATE
TRANSPORT-COMBINED (FAC & TERM)														
0 TO 1							New LTR	12/28/84			0.0000	8/1/82		
OVER 1 TO 8							structure	12/28/84			0.0000	8/1/82		
OVER 8 TO 18							see last	12/28/84			0.0000	8/1/82		
OVER 18 TO 25							page with	12/28/84			0.0000	8/1/82		
OVER 25 TO 50							new intro	12/28/84			0.0000	8/1/82		
OVER 50 TO 100							state	12/28/84			0.0000	8/1/82		
OVER 100							rates for	12/28/84			0.0000	8/1/82		
LOCAL SWITCHING							transpnt	12/28/84			0.0000	8/1/82		
							0.000001	12/28/84			0.0000	8/1/82		
CCL-ORIG							0.000007	06/13/87			0.0000	8/1/81		
CCL-TERM							0.000007	06/13/87			0.0114	1/15/84		
* CCL-RATE ADDITIVE											0.0000	4/24/87		
** EASYCALL							0.015046	08/15/87			0.0108	1/1/81		
*** USFLOCAL											0.00152	10/1/85		

\* FOOTNOTE THE RATE ADDITIVE APPLIES TO ALL CARRIER COMMON LINE ACCESS MINUTES.

\*\* FOOTNOTE THE INTRASTATE EASYCALL RATE IS A MONTHLY CHARGE PER L.A. LINE IN WESTERN REG. AND A MONTHLY CHARGE PER MIN IN EASTERN REGION.

\*\*\* FOOTNOTE THE INTRASTATE USFLOCAL RATE IN ARIZONA IS ADDED TO ORIGINATING CCL. IN OREGON, IT IS ADDED TO TERMINATING CCL. IN WASHINGTON, IT IS ADDED TO BOTH.

# Denotes changes

SWITCHED ACCESS  
INTRASTATE

JULY 14, 1997

PAGE 1

RATE ELEMENT	AMOUNT	EFF. DATE	AMOUNT	EFF. DATE	AMOUNT	EFF. DATE	AMOUNT	EFF. DATE	AMOUNT	EFF. DATE	AMOUNT	EFF. DATE	AMOUNT	EFF. DATE	AMOUNT	EFF. DATE
TANDEM TRANSPORT INDEX																
0	NONE	11/1/84	NONE	12/28/84	NONE	2/23/85	NONE	2/28/85	NONE	1/13/86	NONE	2/16/86	NONE	2/21/86	NONE	7/11/86
OVER 0 TO 5	0.000251	11/1/84	0.000237	12/28/84	0.000238	2/23/85	0.000431	2/28/85	0.000234	1/13/86	0.000234	2/16/86	0.000232	2/21/86	0.000431	7/11/86
OVER 5 TO 25	0.000310	11/1/84	0.000273	12/28/84	0.000255	2/23/85	0.000430	2/28/85	0.000250	1/13/86	0.000254	2/16/86	0.000181	2/21/86	0.000430	7/11/86
OVER 25 TO 50	0.000408	11/1/84	0.000208	12/28/84	0.000287	2/23/85	0.000430	2/28/85	0.000285	1/13/86	0.000244	2/16/86	0.000123	2/21/86	0.000430	7/11/86
OVER 50	0.000411	11/1/84	0.000211	12/28/84	0.000288	2/23/85	0.000431	2/28/85	0.000285	1/13/86	0.000247	2/16/86	0.000127	2/21/86	0.000431	7/11/86
TANDEM TRANSPORT PER MILE																
0	NONE	11/1/84	NONE	12/28/84	NONE	2/23/85	NONE	2/28/85	NONE	1/13/86	NONE	2/16/86	NONE	2/21/86	NONE	7/11/86
OVER 0 TO 5	0.000018	11/1/84	0.000018	12/28/84	0.000018	2/23/85	0.000034	2/28/85	0.000033	1/13/86	0.000012	2/16/86	0.000017	2/21/86	0.000034	7/11/86
OVER 5 TO 25	0.000022	11/1/84	0.000018	12/28/84	0.000020	2/23/85	0.000025	2/28/85	0.000028	1/13/86	0.000011	2/16/86	0.000017	2/21/86	0.000025	7/11/86
OVER 25 TO 50	0.000028	11/1/84	0.000019	12/28/84	0.000023	2/23/85	0.000026	2/28/85	0.000025	1/13/86	0.000014	2/16/86	0.000018	2/21/86	0.000025	7/11/86
OVER 50	0.000027	11/1/84	0.000020	12/28/84	0.000026	2/23/85	0.000027	2/28/85	0.000031	1/13/86	0.000015	2/16/86	0.000020	2/21/86	0.000027	7/11/86
TANDEM SWITCH CHARGE	0.007650	11/1/84	0.007700	12/28/84	0.008000	2/23/85	0.008750	2/28/85	0.008750	1/13/86	0.008000	2/16/86	0.008233	2/21/86	0.008750	7/11/86

# Denotes new LTR Structure for Intrastate Switched Access

RATES UPDATES  
JULY 14, 1997

SWITCHED ACCESS  
INTRASTATE

PAGE 2

RATE ELEMENT	AMOUNT	EFF. DATE
TANDEM TRANSPORT INDEX		
0	NONE	10/24/86
OVER 0 TO 5	0.000431	10/24/86
OVER 5 TO 25	0.000430	10/24/86
OVER 25 TO 50	0.000430	10/24/86
OVER 50	0.000431	10/24/86
TANDEM TRANSPORT PER MILE		
0	NONE	10/24/86
OVER 0 TO 5	0.000022	10/24/86
OVER 5 TO 25	0.000023	10/24/86
OVER 25 TO 50	0.000023	10/24/86
OVER 50	0.000024	10/24/86
TANDEM SWITCH CHARGE	0.008000	10/24/86

# Denotes new LTR Structure for Intrastate Switched Access

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DATE ELEMENT	ALL STATES ENCLOSURE #	OFF STATE	SO.DAN.	OFF. DATE
SOO DATA BASE	0.001000	0.1100	0.000012	1.110000
VERTICAL FEATHERS				
POPE TRANSLATION	0.000000	1.110000	0.000000	0.1100
DEFINITION #	0.000000	1.1100	0.000000	0.1100

● 2010 年 10 月 1 日起, 凡在境内销售货物或提供应税劳务, 以及进口货物的单位和个人, 均应按销售额或销售数量缴纳消费税。



10:50AM 1031 CQIF 44TH FL

P. 7

DESCRIPTION	AMOUNT	DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT	DATE
VOICE GRADE	27.25	7/1/95	27.25	7/1/95	27.25	7/1/95	27.25	7/1/95	27.25	7/1/95	27.25	7/1/95	27.25	7/1/95
OS1 NON-PLAN MONTHLY @	125.00	7/1/95	125.00	7/1/95	125.00	7/1/95	125.00	7/1/95	125.00	7/1/95	125.00	7/1/95	125.00	7/1/95
OS1 ZONE 1 MONTHLY @	115.00	7/1/95	115.00	7/1/95	115.00	7/1/95	115.00	7/1/95	115.00	7/1/95	115.00	7/1/95	115.00	7/1/95
OS1 ZONE 2 MONTHLY @	125.00	7/1/95	125.00	7/1/95	125.00	7/1/95	125.00	7/1/95	125.00	7/1/95	125.00	7/1/95	125.00	7/1/95
OS1 ZONE 3 MONTHLY @	135.00	7/1/95	135.00	7/1/95	135.00	7/1/95	135.00	7/1/95	135.00	7/1/95	135.00	7/1/95	135.00	7/1/95
OS3 NON-PLAN MONTHLY @	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95
OS3 ZONE 1 MONTHLY @	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95
OS3 ZONE 2 MONTHLY @	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95
OS3 ZONE 3 MONTHLY @	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95	1350.00	7/1/95
INTERCONNECTION CHARGE	0.00215	7/12/97	0.00215	7/12/97	0.00215	7/12/97	0.00215	7/12/97	0.00215	7/12/97	0.00215	7/12/97	0.00215	7/12/97
TRANSITIONAL #	0.00275	7/12/97	0.00275	7/12/97	0.00275	7/12/97	0.00275	7/12/97	0.00275	7/12/97	0.00275	7/12/97	0.00275	7/12/97
INFORMATION SURCHARGE CA	0.00201	07/01/97	0.00201	07/01/97	0.00201	07/01/97	0.00201	07/01/97	0.00201	07/01/97	0.00201	07/01/97	0.00201	07/01/97
PRIMUM	0.00212	07/01/97	0.00212	07/01/97	0.00212	07/01/97	0.00212	07/01/97	0.00212	07/01/97	0.00212	07/01/97	0.00212	07/01/97
TRANSITIONAL	0.00212	07/01/97	0.00212	07/01/97	0.00212	07/01/97	0.00212	07/01/97	0.00212	07/01/97	0.00212	07/01/97	0.00212	07/01/97
OPTIONAL FARE														

\* MONTHLY RATES ONLY REFER TO SECTION 2 OF FEE # 1 FOR FARE PERIOD & PER CAPACITY RATE.

FILE 27 10:51PM 1001 CALIF 44TH FL

DATE	TIME	DATE	TIME	DATE	TIME	DATE	TIME	DATE	TIME	DATE	TIME	DATE	TIME
7/1/88	7/1/88	7/1/88	7/1/88	7/1/88	7/1/88	7/1/88	7/1/88	7/1/88	7/1/88	7/1/88	7/1/88	7/1/88	7/1/88
OVER 3 TO 5	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00
OVER 5 TO 25	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00
OVER 25 TO 50	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00
OVER 50	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00
VOICE DIALS PER MIN	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE
OVER 3 TO 5	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17
OVER 5 TO 25	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17
OVER 25 TO 50	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17
OVER 50	0.22	0.22	0.22	0.22	0.22	0.22	0.22	0.22	0.22	0.22	0.22	0.22	0.22
ENTRANCE FACILITY													
VOICE GRADE	27.25	27.25	27.25	27.25	27.25	27.25	27.25	27.25	27.25	27.25	27.25	27.25	27.25
DS1 NON-PLAN*													
MONTHLY @	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00
DS1 ZONE 1*													
MONTHLY @	115.00	115.00	115.00	115.00	115.00	115.00	115.00	115.00	115.00	115.00	115.00	115.00	115.00
DS1 ZONE 2*													
MONTHLY @	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00
DS1 ZONE 3*													
MONTHLY @	135.00	135.00	135.00	135.00	135.00	135.00	135.00	135.00	135.00	135.00	135.00	135.00	135.00
DS3 NON-PLAN*													
MONTHLY @	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00
DS3 ZONE 1*													
MONTHLY @	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00
DS3 ZONE 2*													
MONTHLY @	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00
DS3 ZONE 3*													
MONTHLY @	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00	1350.00
INTERCONNECTION CHARGE													
PERMANENT	0.00215	0.00215	0.00215	0.00215	0.00215	0.00215	0.00215	0.00215	0.00215	0.00215	0.00215	0.00215	0.00215
TRANSITIONAL	0.00275	0.00275	0.00275	0.00275	0.00275	0.00275	0.00275	0.00275	0.00275	0.00275	0.00275	0.00275	0.00275
INFORMATION SURCHARGE (A)													
PERMANENT	0.00025	0.00025	0.00025	0.00025	0.00025	0.00025	0.00025	0.00025	0.00025	0.00025	0.00025	0.00025	0.00025
TRANSITIONAL	0.00015	0.00015	0.00015	0.00015	0.00015	0.00015	0.00015	0.00015	0.00015	0.00015	0.00015	0.00015	0.00015

\* CHANGES  
 \* NEW  
 @ MONTHLY RATE ONLY REFER TO SECTION 5 OF FCC # 1 FOR FURTHER INFO & CAPACITY RATES

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DB1 ZONE 1' (0 NO RATES) @											
OVER 0 TO 8											
FIXED	88.50	7/1/98	88.50	7/1/98	88.50	7/1/98	88.50	7/1/98	88.50	7/1/98	88.50
PER MILE	13.55	7/1/98	13.55	7/1/98	13.55	7/1/98	13.55	7/1/98	13.55	7/1/98	13.55
OVER 8 TO 25											
FIXED	111.21	7/1/98	111.21	7/1/98	111.21	7/1/98	111.21	7/1/98	111.21	7/1/98	111.21
PER MILE	14.38	7/1/98	14.38	7/1/98	14.38	7/1/98	14.38	7/1/98	14.38	7/1/98	14.38
OVER 25 TO 50											
FIXED	116.35	7/1/98	116.35	7/1/98	116.35	7/1/98	116.35	7/1/98	116.35	7/1/98	116.35
PER MILE	14.51	7/1/98	14.51	7/1/98	14.51	7/1/98	14.51	7/1/98	14.51	7/1/98	14.51
OVER 50											
FIXED	130.00	7/1/98	130.00	7/1/98	130.00	7/1/98	130.00	7/1/98	130.00	7/1/98	130.00
PER MILE	15.05	7/1/98	15.05	7/1/98	15.05	7/1/98	15.05	7/1/98	15.05	7/1/98	15.05
DB1 ZONE 2' (0 NO RATES) @											
OVER 0 TO 8											
FIXED	88.50	7/1/98	88.50	7/1/98	88.50	7/1/98	88.50	7/1/98	88.50	7/1/98	88.50
PER MILE	13.55	7/1/98	13.55	7/1/98	13.55	7/1/98	13.55	7/1/98	13.55	7/1/98	13.55
OVER 8 TO 25											
FIXED	111.21	7/1/98	111.21	7/1/98	111.21	7/1/98	111.21	7/1/98	111.21	7/1/98	111.21
PER MILE	14.38	7/1/98	14.38	7/1/98	14.38	7/1/98	14.38	7/1/98	14.38	7/1/98	14.38
OVER 25 TO 50											
FIXED	116.35	7/1/98	116.35	7/1/98	116.35	7/1/98	116.35	7/1/98	116.35	7/1/98	116.35
PER MILE	14.51	7/1/98	14.51	7/1/98	14.51	7/1/98	14.51	7/1/98	14.51	7/1/98	14.51
OVER 50											
FIXED	130.00	7/1/98	130.00	7/1/98	130.00	7/1/98	130.00	7/1/98	130.00	7/1/98	130.00
PER MILE	15.05	7/1/98	15.05	7/1/98	15.05	7/1/98	15.05	7/1/98	15.05	7/1/98	15.05
DB1 ZONE 3' (0 NO RATES) @											
OVER 0 TO 8											
FIXED	88.50	7/1/98	88.50	7/1/98	88.50	7/1/98	88.50	7/1/98	88.50	7/1/98	88.50
PER MILE	13.55	7/1/98	13.55	7/1/98	13.55	7/1/98	13.55	7/1/98	13.55	7/1/98	13.55
OVER 8 TO 25											
FIXED	111.21	7/1/98	111.21	7/1/98	111.21	7/1/98	111.21	7/1/98	111.21	7/1/98	111.21
PER MILE	14.38	7/1/98	14.38	7/1/98	14.38	7/1/98	14.38	7/1/98	14.38	7/1/98	14.38
OVER 25 TO 50											
FIXED	116.35	7/1/98	116.35	7/1/98	116.35	7/1/98	116.35	7/1/98	116.35	7/1/98	116.35
PER MILE	14.51	7/1/98	14.51	7/1/98	14.51	7/1/98	14.51	7/1/98	14.51	7/1/98	14.51
OVER 50											
FIXED	130.00	7/1/98	130.00	7/1/98	130.00	7/1/98	130.00	7/1/98	130.00	7/1/98	130.00
PER MILE	15.05	7/1/98	15.05	7/1/98	15.05	7/1/98	15.05	7/1/98	15.05	7/1/98	15.05

MONTHLY RATE: QUAL. BASED TO SECTION 6 OF MCC # 1 FOR FULL PRICING & PER CAPACITY RATE.

[illegible][illegible][illegible][illegible]

OVERALL	130.00	7/1/90	130.00	7/1/90	130.00	7/1/90	130.00	7/1/90
FIXED	15.00	7/1/90	15.00	7/1/90	15.00	7/1/90	15.00	7/1/90
PER SALE	18.00	7/1/90	18.00	7/1/90	18.00	7/1/90	18.00	7/1/90

OS1 ZONE 1* 10 HO RATES) @	
OVER 0 TO 3	
755.00	
85.50	7/1/02
85.50	7/1/06
88.50	7/1/08
92.50	7/1/09
98.00	7/1/08
98.00	7/1/09
98.00	7/1/09
98.00	7/1/09

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OVER 50	FINED	PER MALE
130.00	71/159	130.00
18.08	71/188	18.08
130.00	71/166	130.00
18.08	71/190	18.08
130.00	71/153	130.00
18.08	71/160	18.08
130.00	71/123	130.00
18.08	71/152	18.08
130.00	71/130	130.00
18.08	71/166	18.08
130.00	71/126	130.00
18.08	71/189	18.08
130.00	71/129	130.00
18.08	71/162	18.08

051 ZONE 2\* (0 RD RATES) @  
OVER 0 TO 0

AA 60	211,620
AA 60	711,900
AA 60	211,620
AA 60	711,900
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AA 60	711,900
AA 60	211,620
AA 60	711,900

[illegible][illegible][illegible][illegible][illegible]

日期	姓名	性别	年龄	职业	住址	电话	备注
1980.10.10	王德胜	男	45	工人	北京市东城区	12345678	
1980.10.11	李小红	女	32	教师	北京市西城区	87654321	
1980.10.12	张小明	男	28	学生	北京市朝阳区	98765432	
1980.10.13	赵大伟	男	50	干部	北京市丰台区	56789012	
1980.10.14	孙丽娟	女	38	医生	北京市海淀区	45678901	
1980.10.15	周国强	男	42	工程师	北京市石景山区	34567890	
1980.10.16	吴小芳	女	25	护士	北京市门头沟区	23456789	
1980.10.17	郑为民	男	55	农民	北京市房山区	12345678	
1980.10.18	冯大刚	男	30	商人	北京市通州区	01234567	
1980.10.19	陈秀英	女	40	作家	北京市顺义区	90123456	
1980.10.20	黄志坚	男	35	记者	北京市昌平区	89012345	
1980.10.21	刘小华	女	22	歌手	北京市大兴区	78901234	
1980.10.22	周为民	男	48	律师	北京市怀柔区	67890123	
1980.10.23	吴大伟	男	33	画家	北京市密云区	56789012	
1980.10.24	孙丽娟	女	27	舞蹈家	北京市延庆区	45678901	
1980.10.25	郑国强	男	52	科学家	北京市昌平区	34567890	
1980.10.26	冯小芳	女	24	演员	北京市昌平区	23456789	
1980.10.27	陈为民	男	46	企业家	北京市昌平区	12345678	
1980.10.28	黄大刚	男	31	程序员	北京市昌平区	01234567	
1980.10.29	刘秀英	女	39	翻译家	北京市昌平区	90123456	
1980.10.30	周志坚	男	36	音乐家	北京市昌平区	89012345	
1980.11.01	吴小华	女	23	模特	北京市昌平区	78901234	
1980.11.02	周为民	男	49	哲学家	北京市昌平区	67890123	
1980.11.03	吴大伟	男	34	诗人	北京市昌平区	56789012	
1980.11.04	孙丽娟	女	28	作家	北京市昌平区	45678901	
1980.11.05	郑国强	男	53	数学家	北京市昌平区	34567890	
1980.11.06	冯小芳	女	25	歌手	北京市昌平区	23456789	
1980.11.07	陈为民	男	47	企业家	北京市昌平区	12345678	
1980.11.08	黄大刚	男	32	程序员	北京市昌平区	01234567	
1980.11.09	刘秀英	女	40				

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	7/1/95	7/1/96	7/1/97	7/1/98	7/1/99	7/1/00	7/1/01	7/1/02	7/1/03
OVER 0 TO 5									
FIXED	310.00	310.00	310.00	310.00	310.00	310.00	310.00	310.00	310.00
PER MILE	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00
OVER 5 TO 25									
FIXED	350.00	350.00	350.00	350.00	350.00	350.00	350.00	350.00	350.00
PER MILE	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00
OVER 25 TO 50									
FIXED	380.00	380.00	380.00	380.00	380.00	380.00	380.00	380.00	380.00
PER MILE	44.00	44.00	44.00	44.00	44.00	44.00	44.00	44.00	44.00
OVER 50									
FIXED	410.00	410.00	410.00	410.00	410.00	410.00	410.00	410.00	410.00
PER MILE	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00
OVER 0 TO 5									
FIXED	310.00	310.00	310.00	310.00	310.00	310.00	310.00	310.00	310.00
PER MILE	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00
OVER 5 TO 25									
FIXED	350.00	350.00	350.00	350.00	350.00	350.00	350.00	350.00	350.00
PER MILE	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00
OVER 25 TO 50									
FIXED	380.00	380.00	380.00	380.00	380.00	380.00	380.00	380.00	380.00
PER MILE	44.00	44.00	44.00	44.00	44.00	44.00	44.00	44.00	44.00
OVER 50									
FIXED	410.00	410.00	410.00	410.00	410.00	410.00	410.00	410.00	410.00
PER MILE	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00
OVER 0 TO 1									
FIXED	310.00	310.00	310.00	310.00	310.00	310.00	310.00	310.00	310.00
PER MILE	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00
OVER 1 TO 25									
FIXED	350.00	350.00	350.00	350.00	350.00	350.00	350.00	350.00	350.00
PER MILE	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00
OVER 25 TO 50									
FIXED	380.00	380.00	380.00	380.00	380.00	380.00	380.00	380.00	380.00
PER MILE	44.00	44.00	44.00	44.00	44.00	44.00	44.00	44.00	44.00
OVER 50									
FIXED	410.00	410.00	410.00	410.00	410.00	410.00	410.00	410.00	410.00
PER MILE	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00

\* MONTHLY RATES ONLY. REFER TO SECTION 8 OF FCC 47 CFR PART 101 FOR PERMIT AND PERMITS CAPACITY RATES.







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